STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF NICHOLAS G. BROOKES

VOLUME II, PAGES 283 - 515

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(The following is the continued deposition of NICHOLAS G. BROOKES, taken pursuant to Notice of Taking Deposition, at the offices of Brown, Todd & Heyburn PLLC, Attorneys at Law, 3200 Providian Center, Louisville, Kentucky, commencing at approximately 8:42 o'clock a.m., November 6, 1997.)

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I N D E X

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	1495	Memo dated October 5, 1987, Corti to list, Bates 506290473-7	371
	1496	"SPOKESPERSONS' GUIDE: CONTENT," Bates 506290478-557	376
	1497	Letter dated 30th April 1985, Mann to Thornton, Bates 107334119-23	391
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1499 "SURVEY OF CIGARETTE SMOKING BEHAVIOR AND ATTITUDES, Volume I, Analysis of Survey Results," Bates 650340129-93 403

4824 "1969 Survey of Cigarette Smoking Behavior and Attitudes, Volume II, Survey of the Literature 1967-1969," Bates 650342138-85 407

4825 Letter dated April 28, 1983, Stallone to Kovoloff, Bates 690132319 446

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P R O C E E D I N G S

(Witness previously sworn.)

NICHOLAS G. BROOKES

called as a witness, being previously sworn, was examined and testified as follows:

ADVERSE EXAMNATION (cont'd)

BY MS. WIVELL:

Q. Good morning, sir.

A. Good morning.

Q. You understand you're still under oath.

A. I do indeed.

MR. McCORMICK: Ms. Wivell, before you begin, yesterday you had asked Mr. Brookes to produce for you today a copy of the Brown & Williamson Tobacco Corporation annual 1996 review, and before you continue with your questions, I'd like to do that at this point.

MS. WIVELL: All right, thank you.

MR. McCORMICK: In fact here's two copies for you.

In addition to that, Mr. Brookes made an effort to try to track down answers to a couple of the questions that you had asked and he was not able to respond to or respond to fully, and at this point

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what I'd suggest is that we give Mr. Brookes an opportunity to go ahead and respond to those questions that he has been able to at this point find the answers to.

MS. WIVELL: All right. Well I was going to put it off till a little bit later, but why don't you tell me what questions you did find the answers to, sir.

THE WITNESS: Well thank you, counselor. I completed my home assignment and I have one or two answers for you.

The -- the Kool brand that you produced as an exhibit yesterday has ammonia technology on it, has -- I think we've used ammonia technology in relation to Kool since 1994, I'm -- I understand.

BY MS. WIVELL:

Q. All right. Now I asked you only -- I'd given you some, I think, extra long Kools. Is ammonia --

A. I asked specifically about that particular brand. But I understand the Kool range has ammonia technology since 1994.

Q. That --

A. So that -- that's included.

Q. That was going to be my next question. So all Kool cigarettes have had ammonia technology since

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1994.

A. That's what I have been told this morning.

Q. All right. What other information did you gather for us last night?

A. Ah, let me see. I did double check back on the corporate structure that you asked me to draw at the beginning of yesterday's session. Broadly -- I mean I'm broadly correct about the sort of numbers of intermediate holding companies, and I described them, I think, as -- as not being trading companies, because very -- they don't sell and buy anything, they literally are just in the corporate structure, of course, to -- as -- as shareholders in the next company down. And one or two of those names may not have been totally accurate. I mean broadly it's the right structure, but one or two of those names I -- I think I missed -- I didn't correctly describe on the sheet.

And -- and what else? Oh, you asked me about my remuneration.

Q. Yes, sir.

A. I have checked back and established that in 1996 my total cash remuneration; i.e., salary and cash bonuses, totaled $720,000 in -- in 1996. Before tax of course.

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Q. All right. Sir --
A. Still trying to think what else I was asked to check into.
MR. McCORMICK: Net worth.
THE WITNESS: Oh, net worth. Yes, thank you.
A. I had a word -- conversation this morning, and the outcome of that is that my understanding is the economic net worth of -- of Brown & Williamson today is anywhere between five and seven billion dollars.
Q. B --
Billion --
A. B with a b.
Q. -- with a b.
A. B with a b.
MR. McCORMICK: And capital contribution.
THE WITNESS: Oh.
A. The capital contribution you referenced me to last night, I think in 1994, was -- was made in relation to the economic standing of Brown & Williamson at the time following on 1993 when we had a relatively poor trading year in relation to -- as did many of the manufacturers here in the U.S. because of Marlboro Friday, of course that day when there was a significant drop in the price of

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Marlboro, and that restructured the pricing positions of all brands in the marketplace. And we took -- we also -- there was other reasons why our trading performance in 1993 wasn't stellar. The following year it improved, it improved dramatically. And we of course at that stage were developing plans to acquire American Tobacco, and our shareholder determined that it was appropriate to provide us with a -- a capital infusion of a billion dollars, I believe. So it was in relation to the acquisition of American Tobacco and the performance following on Marlboro Friday.

Q. Is that billion dollars a loan that B.A.T Industries P.L.C. made?

A. No, I -- I believe it was -- it was made as a capital contribution by our shareholders. I'm not quite sure where the billion dollars came from, whether it was ultimately contributed from the ultimate share -- trading -- sorry, the ultimate holding company, which, of course, itself is not a trading company, it itself is only a holding company of shares, B.A.T Industries P.L.C., but it -- it may have come from any one of the intermediate holding companies who had available resources to contribute as -- as capital to Brown & Williamson.

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And what was the other point I was going to make? It's -- it was in fact -- that's right. It was in fact the first capital contribution, didn't need to be reminded of this, this was the first capital contribution that our shareholders have made into Brown & Williamson since the company was first acquired in 1927.

MS. WIVELL: All right, sir, let's mark the 1996 annual review and identify it for the record.

(Plaintiffs' Exhibit 1491 was marked for identification.)

BY MS. WIVELL:

Q. Sir, would you please identify Exhibit 1491 for the record.

A. Well it's the Brown & Williamson Tobacco Corporation annual review for 1996.

Q. And is the Exhibit 1491 a document you helped prepare?

A. I certainly, I think, approved some of the -- the input. I don't -- I wouldn't say I prepared it.

Q. All right. Thank you.

Could you direct your attention now to Plaintiffs' Exhibit 285.

A. Oh. Oh, this one? Okay.

Q. All right. Now yesterday we made reference from

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time to time to the BAT Group, and would you please turn to the second page of Exhibit 285.

A. Uh-huh.

Q. There it says, in the second-to-the-last complete paragraph, "'B.A.T Group' will continue to be used as the proper reference to the group of companies comprising B.A.T Industries and its subsidiary and associated companies." Do you see that, sir?

A. Yes.

Q. All right. Are you aware of the -- that the phrase "BAT Group" includes B.A.T Industries and its associated and subsidiary companies?

MR. McLAUGHLIN: Objection to the form. I think the term is "B.A.T Group."

A. Yes, it is "B.A.T Group," that's quite correct. And it's -- my understanding is that the B.A.T Group is a term to be used -- let's make sure I understand this -- and for the purposes of press releases and the like, to -- to -- to mean that.

Q. And also in internal communications, the phrase "BAT Group" was acceptable or is acceptable; right?

A. You know, if you're trying to encompass the businesses comprised within the B.A.T Industries group of companies, that I think was, this particular

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date, I assume from this document, acceptable as -- as a shorthand for the B.A.T Industries group of companies.

Q. And sir, it does say in that last -- last sentence of the same paragraph, "In internal communications reference to the BAT Group is acceptable;" right?

A. Could I just see that again?

MR. McLAUGHLIN: Object to the form.

A. Can you point me again to that line? I'm sorry.

Q. The last sentence of that same paragraph.

A. Oh. "In internal communications reference to the BAT Group is acceptable," is what it says, yes.

Q. All right. Sir, in that particular sentence there are no periods between the B and the A and T; right?

A. That's right. But I imagine that's a typo.

Q. Well sir, this was put out by P. J. Ricketts, the corporate secretary of B.A.T Industries; right?

A. Yes. Very -- very --

Q. All right. And you have seen references to the B-A-T Group with no periods in various communications throughout the time you've been with the group; right?

A. Well I have to say that during my period whilst

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an employee of B.A.T Industries, the -- the importance of the dots between the -- the B, the A and the T was given an extraordinarily high importance, and I'm somewhat surprised to see that this document doesn't have dots between the B and the A and the T. I have, however, occasionally seen reference to B.A.T as -- to answer your question -- without the dots.

Q. All right.

A. But that was I think largely frowned on.

Q. Well sir, toward the end of the day yesterday we were talking about some marketing issues. Do you recall that?

A. Yes.

Q. All right. And we were talking about whether certain claims for health-oriented -- strike that.

Do you recall that we were talking about whether certain health claims had been made by B&W for its cigarettes? Do you recall that, sir?

A. I remember you asked that question, yes.

Q. All right. Now sir, do you --

Are you aware that Brown & Williamson developed a marketing strategy for a cigarette that stressed the healthfulness?

A. Am I aware of that? No, I'm not.

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Q. Well are you aware that Brown & Williamson had marketed a cigarette that addressed or that stressed the fact that it had a low gas?

A. A low gas?

Q. Yes, sir.

A. I'm not sure I know that -- what that would mean.

Q. All right.

A. So I wasn't aware of it, no.

Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 4424, it says at the top "FACT, CONCEPT DESCRIPTION AND POTENTIAL AND MARKETING PLAN." Right?

A. Uh-huh. Right.

Q. And Exhibit 4424 is Bates numbered 660067922 on its first page; right?

A. That's correct.

Q. Now did you ever hear of FACT cigarettes?

A. I have a vague --

I have a recollection of the name FACT in relation to cigarettes, but I have to tell you I know very little about it.

Q. All right. Would you turn to the second page under the heading "PURPOSE" --

A. Yes.

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Q. -- and read that Roman numeral to yourself.
A. I've read the first paragraph.
Q. All right. This document recommends marketing of a new cigarette; right?
A. That's what it says.
Q. And that new product would be focussed on the development of a health-oriented brand which offered the consumer selective gas filtration and lower tar/nicotine and good taste; right?
A. That again is what it says.
Q. All right. And it talks about the fact that consumers' growing interest and concern include the smoking-and-health issues; right?
A. Yes. The previous paragraph I think refers to --
Oh, no. First paragraph refers to that, yes.
Q. And so as a result of consumers' growing interest in the smoking-and-health area, it was felt that that interest justified a new product; right?
A. Again that's what this first paragraph implies, yes.
Q. Would you turn to the page that ends with Bates number 925.
A. Yes.
Q. Now would you read what it says -- read to

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yourself what it says under the -- the heading "Selective Filtration as a Smoking and Health Issue."

A. Just that paragraph.

Q. That section and as well as the next one entitled "Competitive Response."

A. Very good.

I've read it.

Q. All right, sir. Again, this makes reference to the fact that smoking-and-health issues continue to be a concern to smokers; right?

A. Yes.

Q. And it makes reference to the fact that low tar/nicotine cigarettes were considered to be more healthful by the public; right?

A. I assume they're talking about considered by the public. I guess they could be referring to the health authorities, but it doesn't specifically say. But anyway, I think it's open to both interpretations.

Q. All right. Well at least that reference to the "At present, the 'healthful' aspects of cigarettes are considered as being synonymous with lowered tar/nicotine," that is -- it follows a sentence that refers to consumers; doesn't it?

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A. Yes, it does. I'm saying I think it doesn't specify exactly who it is that regards this as the -- as being synonymous with low tar and nicotine products, but I'm perfectly prepared to say that they may well have been referring to the consumers.

Q. Now sir, do you know what hi-fi cigarettes are that are referenced in that next --

A. No, I have to say I stumbled over that word myself. I have no recollection of ever hearing that in reference to a segment.

Q. All right. It says here, "At present, competitive activity in the Hi-Fi segment is focused on decreasing tar/nicotine deliveries." You just don't know what that means; right?

A. I'm afraid I don't.

Q. All right. But it --

The paragraph goes on to talk about assuming that gases, in other words, within cigarette smoke, will become a major topic in the smoking-and-health issue; right?

A. Yes, that's what it says.

Q. Now are you aware of the fact that FACT cigarettes were actually marketed?

A. As I say, I think this document must be in the mid-'70s, before I joined BATCo, and I -- whilst I've

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heard the name FACT before, I really know very little, if anything, about the product.

Q. All right. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 944, this is a memorandum dated March 22nd, 1978 entitled "New Product Gas/Health Strategy;" right?

A. Right.

Q. And for the record, Exhibit 944 bears the Bates number 777074764; right?

A. Correct.

Q. Now at -- in --

According to the first paragraph, it says, "In light of the management decision to terminate our national marketplace use of the FACT brand name, the Brand Group felt an obligation to review our corporate interest in the gas/health strategy that has been our operating assumption since accepting responsibility for this brand in February 1977." Right?

A. That's what it says.

Q. Now sir, does this refresh your recollection that indeed Brown & Williamson did market FACT and then decided to terminate it?

A. No. As I said, this is a -- an event that took place long before I joined BATCo even, yet alone --

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let alone became CEO of Brown & Williamson. I'm afraid I really have little, if any, knowledge of this matter apart from the name FACT.

Q. Would you turn to the second page and look at point two at the top of the page.

A. Certainly. Would you like me to read it?

Q. Yes. Read it to yourself, please.

A. Unfortunately, the first two lines have got -- would you --

THE WITNESS: Do you have a better copy?

MR. McCORMICK: No, same thing.

A. Could you just read me the first sentence.

Q. I believe it says, "We do not support definition in advertising of the problem of gas in order to communicate its consumer benefit."

A. Ah.

Q. "To supply such definition would require overt references to the alleged ciliatoxic and cardiovascular ill effects of smoking. The possible ramifications of this in the legal, regulatory and policy areas are appalling." Does it appear to say that, sir?

A. That --

Well I think that probably is what the first line -- you read the first line correctly, I'm sure.

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There are two blanks in my photocopy.

Can I just read the next -- the last sentence?

Right, I've read the full paragraph now.

Q. All right. Now sir, that -- those particular comments are listed as reasons for terminating this particular type of cigarette; right?

A. Well it says "Rationale for Termination of Low Gas Strategy" is the heading. I haven't read the whole memorandum. I'm -- I'm wondering whether it's a sort of debate as to whether they should terminate or not. And it's maybe just a debating memorandum. I'm not sure they're actually reporting what -- a reason for a decision taken previously, if you see what I'm trying to say.

Q. Well the first paragraph does refer to a management decision -- decision to terminate the national marketplace use of the FACT brand name; right?

A. Yes, it does. But then it goes on to say the document provides our recommendation concerning future thought or pursuit of this strategy, so I'm wondering whether this is a sort of pros and cons debate. But I haven't read the whole memorandum.

Q. All right. What ciliatoxic and cardiovascular effects were the folks referring to in this second

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paragraph, sir?
A. Again, I'm afraid I have to say that I know very little about this subject, and I haven't investigated it.
Q. Now "ciliatoxic," you understand that's a phrase that refers to the killing of ciliated cells in the lungs; right?
A. I'm not entirely sure. I think it --
I mean there are cilia, I know that, in -- in the bronchial tract. Whether they're also in the lungs, I'm not sure.
Q. All right. Do you know what cardiovascular ill effects of smoking -- I'm sorry. Strike that.
Do you know what cardiovascular effects there are of smoking cigarettes, sir?
A. Well I'm certainly aware that cigarette smoking has been shown to be a risk factor in relation -- relation to cardiovascular disease, but any more than that I'm afraid I -- I'm not directly familiar.
Q. All right. Well this -- this sentence doesn't refer to risk factors; it talks about the alleged ciliatoxic and cardiovascular ill effects. You just don't know what they're referring to; is that right?
A. Well as I said, I really know very little about this subject. In fact, it was long before I became

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CEO of Brown & Williamson and even before I joined BATCo.

Q. Now sir, do you know about a marketing strategy that was employed by Brown & Williamson for a Vanguard cigarette to capitalize on smoker desires to smoke less hazardous cigarettes?

A. I'm afraid I'm going to have to disappoint you again. No, I don't know anything about Vanguard cigarettes.

Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 4441, this is a document that begins with Bates number 670186789; right?

A. That's correct.

Q. It's entitled "NEW PROJECT" -- I'm sorry, strike that.

Exhibit 4441 is entitled "NEW PRODUCT CONCEPTS;" right?

A. That's correct.

Q. Now if you turn to the second page, it talks about a proposed cigarette called Vanguard; right?

A. Right.

Q. And the marketing strategy is set out below and says "To capitalize upon a prevalent smoker desire to lessen the health risk involved in his smoking via a switch to a low tar cigarette with satisfying

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results;" right?--

MR. McCORMICK: "Satisfying taste."

A. "Satisfying taste," yes.

Q. Oh. "Satisfying taste." Pardon me.

A. Thank you.

Yes, that's what it says.

Q. All right. Now is it your testimony you don't know whether Vanguard was ever marketed?

A. I'm afraid that is my testimony, yes. Because this document doesn't have a date, it's -- it's also a draft. I'm certainly aware that obviously it was a -- a direction that the group was looking at; in other words, producing lower tar and nicotine cigarettes with satisfying taste. That was very much the direction the health authorities both in the U.K. and the U S. were directing us towards. So I'm not surprised by this document. In fact I know nothing more about it than that.

Q. And sir, did you understand that the marketing strategy for these low tar/low nicotine cigarettes would be to capitalize on smokers' concerns about smoking and health?

A. No, I'm not aware of that. But certainly I'm aware the consumers were, obviously, aware of media publicity about smoking and health issues. They

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probably were also aware that health authorities on both sides of the Atlantic were suggesting that lower tar and nicotine consumption might be a prudent thing to -- to -- a prudent direction for them to take.

Q. Move to strike as non-responsive. I'm -- I'm sorry, sir, I'm not talking about what health authorities are talking about, I'm talking about in my question what Brown & Williamson was doing. So with that in mind, let me re-ask my question.

Did you understand that the marketing strategy for low tar/low nicotine cigarettes would be to capitalize on smokers' concerns about smoking and health?

MR. McCORMICK: I object -- object, Ms. Wivell. That question was asked. Mr. Brookes' answer was directly responsive.

A. Well I would have to repeat what I just said. So I'm not directly aware of this project, I'm only aware broadly of the circumstances in which we and probably other manufacturers were looking at low tar and nicotine cigarettes so that could deliver satisfying taste to the consumer.

Q. All right, sir, could you turn to the page that ends with Bates number 798. There is a description of a marketing strategy for a Modified LIFE

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cigarette; right?

A. "Modified LIFE" is the heading.

Q. And there's some marketing strategies set forth; right?

A. It says --

This reference is -- (clearing throat) excuse me -- three very brief lines. This does seem to be a draft document. I'm not sure what it's --

Q. And it says --

A. -- provenance is.

Q. -- "To fully capitalize on health versus smoking" -- I'm sorry.

And it says "To fully capitalize on health versus cigarette smoking publicity and publishing of tar/nicotine data by marketing LIFE as the lowest tar cigarette in the filter 85 segment;" right?

A. That's what it says.

Q. Now sir, one more thing. Could you turn to the page that ends with Bates number 811.

A. Yes, ma'am.

Q. All right. There is a page entitled "Young Male Cigarette;" right?

A. That's what it says.

Q. And under the heading "Strategy" it says, "To improve B&W's position in attracting young male

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smokers by making as direct an appeal as possible in product, packaging, and advertising to young males." Right?

A. Again, that's what the words say.

Q. All right. And then if we turn to the next page, we see that Brown & Williamson had captured information from a brand switching study on smokers ages 16 to 25; right?

A. Yeah, there are various -- a table here which has one section saying 16 to 25 and one saying 41 and over. So it's looking at a broad spec -- sec -- spectrum of the market it appears.

Q. You would agree, sir, that Brown & Williamson then did have information on smokers that were under 25 years of age; right?

A. Under 25 years of age?

Q. Yes.

A. I assume so, but I don't know what the -- I --

I know nothing about the provenance of this document. I don't know what date it is or where it comes from.

Q. But there is information here about smokers under 25; right?

A. That's correct. It says "B&" -- it says "B&W, brackets, V&R, B&W, brackets, K&B." I don't know

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whether that was some independently published study which we were accessing or not. I don't know.

Q. Now if we turn to the page that ends with Bates number 815, we see a heading entitled "Market Potential, Direct Target Group." Right?

A. That's what it says.

Q. And it says, "6.3 million 16 to 18 -- 25 year old smokers of king-size and long-size plain filter cigarettes who consumed 35 billion cigarettes in 1967." Right?

A. Ah, a date at last.

I don't think you read that quite right, if I may say so. I'm sorry. You said -- you mentioned 18. It was "6.3 million 16 to 25 year old smokers of king-size and long-size plain filter cigarettes who consumed 35 billion cigarettes in 1967."

Q. Thank you, sir.

So again, you would agree that Brown & Williamson had information on smokers under the age of 21; right?

A. Apparently in 1967 that might be an interpretation you could make from this document, but again, I really know nothing about this document.

Q. Now sir, isn't it true that Brown & Williamson aimed at developing low tar/low nicotine cigarettes

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to try and intercept people who might otherwise quit smoking?

A. I don't believe so. I believe we offered cigarettes to satisfy every consumer taste, and there were of course consumers who wanted low tar cigarettes.

(Plaintiffs' Exhibit 1492 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1492, this is a Brown & Williamson document on B&W letterhead; right?

A. It appears to be so, yes.

Q. And Exhibit 1492 bears first Bates number 670151032.

A. Correct.

Q. All right. It's dated February 11th, 1980; right?

A. Yes, I believe it is.

Q. All right. Would you turn to the page that ends with the Bates number 034.

A. Yes.

Q. At the top of the page there it talks about a cigarette called Omega, which was another low tar brand; right?

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A. Can I read the -- the top of the page?
Q. Certainly.
A. Which paragraph are you referring to? I'm sorry.
Q. The first one.
A. The first one? Very good.
I've read the --
I read the, sorry, the first paragraph, and Omega appears to be a cigarette, but I have to say I'm not aware of what it refers to because I've never heard of a cigarette called Omega.
Q. All right. Well that's a code name; isn't it?
A. I was just looking back at the first page. Maybe it is.
Q. It refers to, in the first paragraph, to the fact that there is a cigarette code named Omega.
A. I --
That's what it says.
Q. All right. And this particular cigarette would be a low tar cigarette positioned as a low nicotine cigarette as well; right?
A. I don't know, but that seems to be one of the ideas that's being kicked around in the first paragraph.
Q. All right. And it goes on to say, "If the

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ultimate objective of the personally concerned smoker is quitting, the low nicotine benefit of Omega may be extremely motivational to that smoker;" right?

A. That's what it says.

Q. All right. Now sir, have you seen other documents which indicate from the files of Brown & Williamson that low tar/low nicotine cigarettes were aimed at trying to intercept people who might otherwise stop smoking?

MR. McCORMICK: Object to the characterization of this document.

A. No, ma'am, I have not seen other documents that -- to your point.

Q. Sir, by the way, yesterday we talked a bit about compensation. Do you recall that?

A. Yes, I believe I do recall that.

Q. And if a smoker who is smoking a low tar/low nicotine cigarette compensates by changing their smoking pattern, they are actually going to take in more tar and nicotine; right?

A. Well that's a rather fuzzy question, if I may say so, because it depends more against what.

Q. Well sir, isn't it true that any advantage that a supposedly low tar/low nicotine cigarette might give a smoker healthwise will be affected if they

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compensate in response to cigarette design?
A. Well not responding to your question but trying to explain what -- what I understand happens when -- when a smoker trades down from a, say, a high tar cigarette to a low tar cigarette, he is likely -- or he or she is likely, and I think it's common sense to say this, to perhaps puff harder on the cigarette because it will certainly taste a lot lighter. And -- but my understanding is from the research that by and large after four to six weeks an individual then would return to smoking the low tar cigarette in the same way that he previously smoked the high tar cigarette.
Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 953, this is a study done at Group Research & Development Center, Southampton, entitled "COMPENSATION: A REVIEW, THE RELATIONSHIP BETWEEN COMPENSATION AND CHANGES IN CIGARETTE DESIGN." Right?
A. That's correct.
Q. And this was sent to Brown & Williamson and kept in its R&D library; right?
A. I have no way of knowing that, but I'm perfectly prepared to accept --
Oh, it says "R&D LIBRARY" at the bottom of the

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page.
Q. There's a stamp, right?
A. There's a stamp. It appears to have been received on the 24th of June, 1980.
Q. Now sir, Exhibit 953 begins with Bates number 650032329; right?
A. Correct.
Q. All right. Now sir, would you turn to the summary page of the document, which is the fourth page.
A. Okay. Yes, I have the fourth page.
Q. All right. Would you please read to yourself those two pages.
A. Certainly.
Very good, I've read the summary.
Q. Now you understand that the summary portion of a scientific document takes the main points and puts them together; right?
A. I don't --
That will always depend on the author of the report.
Q. All right. Well you consider the folks at Group Health -- or Group Research and -- and -- I'm sorry, strike that.
You considered the people at Southampton to be

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good scientists; right?

A. Yes. I -- I'm quite sure this is a --

You know, I -- I don't want to challenge whether this is a fair summary or not, I haven't read the full report, but it does always depend, as you know, on -- on who authors the -- the summary.

Q. But generally you would agree that a scientific report summary takes the main points so that if a person wants to get the salient points of the report without going through all the data in minute detail, they can read the summary; right?

A. That's what I like to do. But I hope always the summary is an accurate reflection of the document, but sometimes you do have to check the document to make sure that is the case.

Q. All right. Now this document reports work that had been done at Group Research & Development at Southampton on the issue of whether smokers compensate; right?

A. I don't --

Well it says the relationship between compensation and changes in cigarette design, which is slightly different, but it -- I'm sure that the issue you mentioned would be encompassed within that.

Q. And the first sentence of the summary says, "The

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advantages of low-tar or low-retention cigarettes will be affected if smokers compensate in response to changes in cigarette design."

A. That's --

Q. Right?

A. -- what it says, absolutely.

Q. Doesn't mention anything in here about compensation only taking place in the first few weeks after a smoker changes to a lower delivery cigarette; does it?

A. In the summary? No, it doesn't.

Q. And can you direct me to any particular research that shows that compensation doesn't continue on after the first few weeks?

A. Directly? I -- I'd have to consult with my scientists.

There is a lot of work in this area, as I think the bibliography at the end of the note suggests, a lot of it done both internally and externally. But my scientists -- that --

What I've reported earlier as my understanding of compensation is what has been described to me by my scientists.

Q. So really you have no first-hand knowledge and you're just reporting what others have told you;

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right?
A. Well I've applied my -- my direct experience as a smoker, but apart from that -- which accords with what I was told by my scientists, incidentally, but other than that, no.
Q. Now sir, you would agree that smokers assumed the industry was doing something about the health hazards associated with smoking.
A. I'm sorry, could you repeat that question?
Q. Certainly.
Isn't it true that smokers assumed that the cigarette industry was doing something about the health hazards associated with smoking?
A. Well that's a very broad question. Are you talking about a particular group of consumers, or the -- the --
Q. Smokers, sir.
A. -- the public at large?
Q. Isn't it true --
A. I can't speak for every smoker in America as to what they thought, no.
Q. We referred to Dr. Green earlier in this deposition; right?
A. Yes, we did. Doctor --
Q. And --

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A. Yes, that's right.
Q. His name was Sidney?
A. I don't know actually. I know his initials, but --
Q. His initials are SJG; right?
A. That's right.
Jim he was known as, I think, Jim Green.
Q. Showing you what's previously been marked as Plaintiffs' Exhibit 306, have you seen this document before, sir?
A. Can I quick take a quick look? It doesn't look familiar on its face.
Q. For the record, Exhibit 306 bears the Bates number 110069983 and was produced to us by BATCo.
Sir, I'd like you to take a look at the third page of the document under the heading "Page 7."
A. May have I also say for the record that it has no date and no author. But anyway, page seven -- sorry, page three --
Q. Under the heading --
A. "Page 7."
Q. -- "Page 7."
A. I have that.
Q. Where it says "Industry."
A. Uh-huh.

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Q. That paragraph says in part, "Smokers assume the Industry is doing something about it." Right?
A. Again that's what the words say.
Q. All right. And that sentence follows another that says, "It does not follow that if the Industry had entered into medical controversy that smokers would have felt that cigarettes were any less hazardous;" right?
A. That's what it says.
Q. It goes on and says, "Smokers assume the Industry is doing something about it." Right?
A. That's what it says.
Q. Now isn't it true that Brown & Williamson and the other members of the BAT Group knew that smokers believed the cigarette manufacturers were trying to do something to improve the quality of their cigarettes?
MR. McLAUGHLIN: Object to the form.
A. No, I don't know what this particular document refers to. It's not dated. I don't know who authored it. And I don't know, whoever the author was, what data or statistics he was basing his statement upon.
Q. Now sir, you would agree that the tobacco industry has tried to stress over the years that

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there is a, quote, unquote, controversy about whether or not cigarettes cause disease.

A. A controversy is --

I mean I think there was a controversy, certainly, in the early '50s. I don't know whether today I would say there was a controversy within the health authorities about smoking.

Q. All right. Well granted there's no controversy within the health authorities, but isn't it true that publicly the tobacco industry has tried to stress to consumers that there is a controversy?

A. I think -- no, I don't --

I wouldn't accept that characterization, no.

Q. Sir, I'm showing you what has previously been marked as Plaintiffs' Exhibit 4417. This is a document you're familiar with; right?

A. I don't believe so, no. I haven't even looked at it yet. But --

Q. Haven't you been shown this in deposition previously?

A. I'd have to take a look. It looks --

It's a very big document. No one's produced quite a -- such a sizable document to me in depositions previously.

Q. All right. Let's identify it for the record.

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For the record, Exhibit 4417 is entitled "History and Key Trends in the U.S. Cigarette Market, B&W, October, 1979;" right?

A. That's what it says on its face, yes.

Q. All right. And sir, this is a Brown & Williamson document?

A. It would appear to be so, yes.

Q. And it bears the Bates number on the first page 670624932?

A. Yes.

Q. All right. Why don't you just take a moment and review the first couple of pages. You don't have to read them in their entirety, but just review it so you get a sense of what the document is.

A. I'll do my best.

Well I've read the covering page. If you just give me a couple more moments, I'll take a look through part of --

Q. All right.

A. -- some more of the document.

Q. Well I'd like to direct your attention to page 229, the page that ends with Bates number 229.

A. Very good. 229?

Q. 229.

You got it, sir?

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A. Yes.
Q. Would you read the paragraph at the bottom of the page marked "Health."
A. Uh-huh.
I've read it.
Q. All right. Now sir, keeping in mind you haven't read the whole document, you would agree that, based on what you have looked at, this was a -- a document that was written by E. T. Parrack, vice-president of brand management for Brown & Williamson; right?
A. That's who has signed off on the cover sheet.
Q. All right. And he basically went through and summarized key trends in the U.S. cigarette market, according to what he tells us; right?
A. Yes.
Q. All right. Now one of the trends that he discusses is discussed on this page 229 under the subject "Health;" right?
A. Yes, he does.
Q. And according to Mr. Parrack, health was far -- by far the most important factor and trend in the market; right?
A. Yes.
Q. And he says, quote, "All major," underlined, "shifts in smoking habits seem to be a function of

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'health' concerns, as they pose a deep psycological question that every smoker must somehow answer;" right?

A. He puts "health" in quotation marks wherever he uses the word. But yes, you've read the paragraph correctly.

Q. All right. And he talks about the fact that filters and menthol and hi-fi's are all a manifestation of, quote, unquote, health concerns; right?

A. Yes. Again the use of the word hi-fi, which I'm not familiar with, but he says "'health'," in quotes, "concerns can be seen in the filter revolution of the '50s, the emergence of menthol, as well as new hifi-s in the '60s and today."

Q. All right. Also, by the way, before we leave this document, could you turn to the page that ends with 013.

A. Is it further forward or further back?

Q. Further back. Toward the front.

A. Zero --

Q. One three.

A. Yes.

Q. Now there is a chart at the page that ends with 013, "KOOL'S SHARE OF SMOKERS By Age and Sex, 1966 to

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1967;" right?

A. No, 1966 to nineteen ninety -- 1977.

Q. I'm sorry.

A. You're welcome.

Q. All right. Let me try it again.

There on page 013 is a chart entitled "KOOL'S SHARE OF SMOKERS By Age and Sex, 1966 to 1977." Right?

A. Correct.

Q. And that chart includes information on smokers in the age 16-to-25 category; right?

A. Correct, apparently sourced from National Consmer Surveys.

Q. All right. But you would agree that Brown & Williamson had information that included smokers under the age of 16; right? Under the age of 21; right?

A. It would appear so from this document, yes.

Q. All right. Could you turn to the page that ends with Bates number 009.

A. Hang on.

Yes.

Q. And there do you see the third paragraph from the bottom which says, "Other surveys indicate that Kools' share among 16-25 year old smokers advanced

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from 3.0 in 1966 to about 4.5 percent in 1968 to about 16.0 in 1974 and then declined to about 14.5 in 1975?"

A. That's what that paragraph says, yes.

Q. All right. And it goes on to say, "The rise of Kools' share in the 16-25 age group over this period could have added over 2 share points;" right?

A. That's what it says, yes.

Q. Now you would agree that this document shows Brown & Williamson had information on smokers under the age of 21; right?

A. Well it would certainly appear so. As I said earlier, from national opinion surveys.

Q. Now sir, let me ask you this: What is a share point worth?

A. A share point worth?

Q. Yeah. It refers in this answer to two share points.

A. Well one share point would be one percent of the U.S. market.

Q. All right. Well what is one percent of the U.S. market today?

A. That would be, let's see, about 4.5 billion cigarettes.

Q. All right. So two share points would be

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approximately nine billion cigarettes; is that right?
A. Well I --
Q. In today's market?
A. I imagine so, yes.
Q. Do you know what two share points would have been worth in 1979?
A. I have no idea whatsoever, no.
Q. Do you know if it would have been worth more or less than it is today?
A. I have no idea.
Q. Do you know --
A. Couldn't answer that question.
Q. Do you know if smokers smoked more or less in 1979 than they did -- they do today?
A. I don't know the answer to that either, I'm afraid. No, I can't answer that question accurately.
Q. Sir, a little bit ago we were talking about whether there was a controversy -- I'm sorry, strike that.
Do you recall a little bit ago we were talking about whether the cigarette industry stressed a controversy about whether cigarette smoking caused disease?
A. You referenced something to that effect, yes.
Q. All right. Have you ever seen a policy from

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B.A.T Industries on whether or not there was a controversy about whether cigarette smoking caused disease?

A. A policy --

MR. McLAUGHLIN: Object to the form.

A. -- from B.A.T Industries?

Q. Yes, sir.

A. No, I haven't seen such a policy.

Q. I apologize, I only have one of these, but I'm going to ask the court reporter to show you what's previously been marked as Plaintiffs' Exhibit 317.

I would like you to take a moment and read the document, sir.

A. Okay, thank you.

Q. For the record, Exhibit 317 is Bates numbered 620789910 on its first page.

A. That's correct.

I read it.

MR. McCORMICK: Could we do this, could we ask to get a copy of this? I can ask somebody to do that so that all the counsel can see this.

MS. WIVELL: Sure. Can we go off the record?

MR. McCORMICK: Sure.

MS. WIVELL: We can take a break.

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THE WITNESS: Okay.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, have you had the opportunity to review Exhibit 317?

A. Yes. I read it before I left the room.

Q. Now the first page of Exhibit 317 is a memo from P. J. Ricketts to all operating group chairmen/liaison directors; correct?

A. That's correct.

Q. And it's entitled "LEGAL CONSIDERATIONS IN SMOKING & HEALTH ISSUES?"

A. That's right.

Q. And at the time P. J. Ricketts wrote this he was the B.A.T Industries secretary and also a solicitor for B.A.T Industries; right?

A. 1984. I -- I believe he was on the board of B.A.T Industries actually.

Q. Well if he was the secretary, that would place him on the board; wouldn't it?

A. No, it wouldn't, not under U.K. practice.

Q. Oh.

A. No. But in any event, I'm not quite sure what his position was. He was at one stage the secretary

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to B.A.T Industries. Subsequently he joined the board and I think became the legal director.

Q. All right. He was a lawyer.

A. By -- by training he was a barrister, that's right.

Q. Now he refers in the first page to the fresh spate of litigation in the United States against the tobacco industry; right?

A. Yes, he does.

Q. And for that reason he believed -- or he says, "...it is most important that other members of the Group are constantly aware of B.A.T Industries' stance on Smoking & Health." Correct?

A. That's what he's saying, yes.

Q. Now if you turn to the second page of Exhibit 317, the stance on smoking and health entitled "LEGAL CONSIDERATIONS ON SMOKING & HEALTH POLICY" is attached; right?

MR. McLAUGHLIN: Object to the form.

A. Could you --

Could you repeat the question? I'm sorry.

Q. All right. If you turn to the second page of Exhibit 317 --

A. Yes.

Q. -- there is a document entitled "LEGAL

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CONSIDERATIONS ON SMOKING & HEALTH POLICY;" right?
A. That's what it says, yes.
Q. All right. And at the end of the second paragraph it says, "No conclusive scientific evidence has been advanced and the statistical association does not amount to proof of cause and effect. Thus a genuine scientific controversy exists." Right?
A. Indeed.
Q. And it goes on to state, "The Group's position is that causation has not been proved and that we do not ourselves make health claims for tobacco products." Right?
A. Correct, that's what it says.
Q. Now sir, this stance on smoking and health was incorporated into a B.A.T Industries statement of business conduct; wasn't it?
MR. McLAUGHLIN: Object to the form.
A. I'm not aware of that, no.
Q. Sir, showing you what's been marked previously as Plaintiffs' Exhibit 623, this is a document entitled "STATEMENT of BUSINESS CONDUCT," right?
A. That's what it says, yes.
Q. All right. And if we turn to the second page, we see an index that begins with point one, "BAT INDUSTRIES PLC STATEMENT OF BUSINESS CONDUCT."

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Right?

A. That's correct.

Q. And that "BAT Industries PLC," that's Brown & Williamson's ultimate parent company; right?

A. That's the ultimate holding company for the B.A.T Group of companies.

Q. All right. Now would you turn to the page that ends with Bates number 978.

A. 978.

Yes.

Q. At page 978 there is a heading C., "Special Policies for Particular Businesses;" right?

A. That's right.

Q. And the first item under that heading is "Smoking and Health Policy;" right?

A. That's also right.

THE REPORTER: Just a moment, please. Off the record.

(Discussion off the record.)

BY MS. WIVELL:

Q. Now sir, under the "Smoking and Health" --

THE TECHNICIAN: One second. Marti, can you check that mike again. Make sure both switches are on.

THE REPORTER: We're on.

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Q. Under the heading "Smoking and Health Policy" it says, "It is important that statements made concerning cigarette smoking and health related issues be factually and scientifically accurate." Right?

A. That's correct.

Q. And it goes on to say, "It is the considered view of the Group that...scientific causation between smoking and diseases allegedly related to smoking has not been established; and that...the Group should not make health claims for tobacco products in connection with product promotion;" right?

A. That's correct.

Q. Now sir, if we turn to the end of Exhibit 623, there is a -- an appendix that contains a "LIST OF RELEVANT POLICIES;" right?

A. Yes.

Q. And among those policies is the March 1984 "Legal Considerations on Smoking & Health Policy;" right?

A. One moment.

Ah, I have it. Yes.

Q. All right. And if we turn back to Exhibit 317, Mr. Ricketts' memo, we see that it is dated March 26th, 1984; right?

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A. One moment.

Yes, it is dated March 24.

Q. All right. And Mr. Ricketts' memo --

A. Twenty-six, I'm sorry.

Q. I'm sorry. Just so we're clear, Mr. Ricketts' memo is dated March 26, 1984.

A. That's correct.

Q. All right. And Mr. Ricketts' memo refers to the "Group policy on Smoking & Health Issues as summarised in the attached note;" right?

A. I'm sorry. Oh, you're actually back on this document.

It says "...be grateful if you would ensure the widest possible circulation in your Operating Group of the Group policy on Smoking & Health Issues as summarised in the attached note."

Q. And the attached note bears the date March 1984 and is entitled "LEGAL CONSIDERATIONS ON SMOKING & HEALTH POLICY;" right?

A. That's correct.

Q. You would agree that it appears to be the list of the -- I'm sorry, strike that.

You agree that it would appear to be the policy that is referred to on the page that ends with 984 of Exhibit 623.

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A. It certainly may be.
Q. All right. You have no reason to believe it is not; do you?
A. I have no reason to believe it is not.
Q. Now sir, are you familiar with a book entitled "TOBACCO: Issues/Answers/Actions" that Brown & Williamson put out?
A. I'm sorry, could you describe the book again?
Q. Yes. Are --
Are you familiar with a book entitled "TOBACCO: Issues/Answers/Actions" that was put out by Brown & Williamson?
A. No, I don't believe I am. I may be, but I'm not familiar with that title.
(Plaintiffs' Exhibit 1493 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1493, this is a document that begins with the Bates number 670231717; right?
A. That's right.
Q. And if we look at the second page of the document, it is a B&W booklet entitled "TOBACCO: Issues/Answers/Actions."
A. That's what the title says.

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Q. The date of it is September 1979; right?
A. It says "Revised September, 1979," yes.
Q. All right. Now sir, isn't it true that this document says -- I -- I'm sorry, strike that.
This document was prepared so that Brown & Williamson employees could answer questions that might -- they might be faced concerning smoking-and-health issues.
A. No, that's not my understanding. If this is the book that I think it might be, or the document that I think it might be, that's not my understanding, no.
Q. All right. Would you turn to the page that ends with Bates number 721.
A. Uh-huh.
Q. Do you have it, sir?
A. I have it.
Q. There it says, in the third-to-the-last paragraph, "TOBACCO: Issues/Answers/Actions is designed to provide you with a balanced view of issues facing Brown & Williamson.
"In preparing this reference source for you, we have tried to avoid overly emotional prose, in favor of making it as factual a presentation of the situation as poss -- possible." Right?
A. That's what it says.

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Q. Okay. And sir, would you take a moment to review the first two pages of this document.
A. Certainly.
MR. McCORMICK: Do you mean the page you just read from, and then the following page?
MS. WIVELL: Yes.
THE WITNESS: That's what I understood.
MS. WIVELL: I wasn't clear. I'm sorry.
THE WITNESS: That's what I understood.
MS. WIVELL: Thank you.
I read it.
Q. All right, sir, according to this introduction --
This is an introduction that you've just read; right?
A. Yes. I hadn't previously read the in --
Well I don't say it's an introduction. It's a covering -- covering letter, almost, from the corporate affairs department.
Q. All right. Well this covering letter from the corporate affairs department gives us some indication of what the document was prepared for; right?
A. Well it's their interpretation of what the document was prepared -- prepared for. I'm not sure necessarily it was what the corporation as a whole

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had in mind. But anyway, we can return to that in a bit.

Q. All right. Well it says here that this document is "attempting to present a reasoned, balanced summary of the cigarette/smoking issue so that you -- as a concerned citizen -- can help counter the often unreasoned claims and demands...of our adversaries;" right?

A. That's --

Those words are used, I believe, yes.

Q. All right. And it --

The corporate affairs department of Brown & Williamson also said that they were launching their own information program to complement the activities of The Tobacco Institute; right?

A. Yes, it mentions The Tobacco Institute in here.

Q. All right. And it mentions it in the context that this particular program was designed to complement The Tobacco Institute's activities; right?

A. "Complement and expand" are the words used. But that's what they say.

Q. All right. And it also was to support the actions of the Tobacco Tax Council; right?

A. Yes. I --

I'm not familiar with the Tobacco Tax Council,

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but that's what it says.

Q. Do you know that Brown & Williamson helps fund the Tobacco Tax Council?

A. I'm not familiar with it, so I wouldn't know that, no.

Q. All right. Would you now --

Earlier I had asked you if this document was prepared to be given to Brown & Williamson employees. Having read this introduction by Brown & Williamson's corporation affairs department, do you see that it was a document that was directed to Brown & Williamson employees?

A. It would appear so. But if this is the same document I had presented to me in other depositions, I have a sense that the cover note doesn't actually support what's actually in the document. I'm just trying to see if I can find the reference I was shown.

Q. So, sir, you have read this document before?

A. No. I think I've been shown this document in depositions. I'm not -- it may be the same document, it may not. It looks rather similar in the way it's presented.

Q. Well sir, have -- have you read it?

A. Have I read it?

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Q. Yeah.
A. No, I haven't.
Q. All right. Would you turn to the page that ends with Bates number 763.
A. 763. Certainly, yeah.
Q. Do you have it, sir?
A. Yes, I do.
Q. There under the conclusion it says, "The claim that cigarette smoking causes lung cancer has not been scientifically proven;" right?
A. That's what it says.
Q. All right. And sir, isn't it Brown & Williamson's position that, to this day, the claim that cigarette smoking causes lung cancer has not been scientifically proven?
A. That is the position. I believe that's also the position that would have to be taken by scientists in the matter.
Q. Scientists within your company; right?
A. No, I -- I think scientists may well conclude on the basis of statistics that the evidence -- circumstantial evidence if you like -- is strong in relation to cigarette smoking and lung cancer, but as there is no mechanism yet been established it would be difficult to say in scientifically that it had

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been proven.
Q. Well sir, the scientists that you refer to as agreeing with your position, those scientists -- that scientist would not be the Surgeon General of the United States; would it?
A. Well the Surgeon General of the United States has a public policy position to take, obviously based -- and he can base his judgments and should base his judgments indeed on statistics and any of the other evidence that's presented to him. I don't think he's required to make scientific conclusions or finding of fact. He -- he really has a public policy position to enunciate.
Q. Well sir, have you reviewed the 1964 Surgeon General's report to see what evidence the committee that wrote the Surgeon General's report actually reviewed?
A. No. There was a comprehensive review of documentation in '64 and I think in subsequent Surgeon General's reports, but the point I think I make is still valid.
Q. All right. Well just so we're clear here, you understand that the Surgeon General in 1964 and subsequent Surgeon Generals looked not only the statistics but also at data from autopsies; right?

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A. Well, data from many sources.
Q. All right. Well you -- you understand that they looked at autopsy data, looking at the lungs of smokers for example; right?
A. Yes, I'm sure they did.
Q. All right. And you understand that they reviewed some company studies about inhalation tests?
A. Company studies?
Q. Didn't they review company studies, sir?
A. Well I believe they certainly reviewed over 250 studies that were funded by the CTR over the period from '64 to date, so they -- if you want to classify those as company studies, certainly, yes.
Q. Well did they review internal studies that were done before 1964? I'm focusing on the 1964 Surgeon General's report.
A. If they were in the public domain, I'm sure they did.
Q. Ah, okay. So you would agree that they reviewed scientific literature on studies on animals that had been done prior to 1964; right?
A. Indeed.
Q. And that's not just statistical evidence; is it, sir?
A. Well it's not conclusive evidence, either. I

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mean what they discovered was that there is a strong statistical correlation between smoking and ill health, and the diseases that normally are associated with smoking were found to correlate statistically, and they based their judgments on that and other evidence, no doubt, that was presented. But I would have to draw you -- bring you back to the point that supports our position in the matter, which is that it hasn't been established in a laboratory that whole smoke, for example, on animal tests produces human-style lung cancers in a significantly -- statistically significant way, nor has the actual mechanism by which smoking may or may not trigger cancer, for example, has -- has -- has not been found, not been shown.

Q. Move to strike as non-responsive.

Now sir, let me ask you this: These scientists that you say agree with you, those -- they do not include the scientists from the American Cancer Association; do they?

A. Well I say if you ask the American Cancer scientists what is the mechanism by which smoking causes disease, they unfortunately -- may have theories, but they won't be able to confirm what it is.

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Q. Well sir, my question is a little different. You would agree that the American Cancer Society policy is that cigarette smoking causes disease; right?

A. If that's their policy, I --

I imagine it probably is, yes.

Q. All right.

A. But I said if you ask those scientists to demonstrate how the mechanism of cancer as a result of inhaling whole smoking is caused, they are unable to do so.

Q. All right.

A. And there is support for that, because in 19 -- just last year we had the -- the controversy about the P53 gene and benzo(a)pyrene.

Q. Well sir --

A. The scientists at that time were saying --

Q. I'm not talking about --

MR. McCORMICK: Can he finish his answer, please.

Q. -- mechanisms. I'm talking about the policy.

MR. McCORMICK: Counsel --

Q. And let me rephrase my question so we're clear.

You are aware, sir, that the American Cancer Association believes cigarette smoking causes cancer;

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right?

MR. McCORMICK: Objection. Please don't respond, Mr. Brookes.

Could I have the last question and the interrupted answer read back, and an opportunity for the witness to finish the answer.

(Record read by the court reporter.)

MR. McCORMICK: You can finish, Mr. Brookes.

A. Well the scien --

There was a lot of media reports on this issue, and scientists indeed were quoted in the media saying at last, the evidence against smoking to date has been largely circumstantial, and now we have definitive proof that smoking causes these diseases. And subsequently there were articles published in learned magazines which said, well, regrettably that wasn't the case, there were significant failings and/or faults identified within that research, and the issue is still undetermined.

Q. Move to strike as non-responsive everything after "I imagine it probably is, yes."

Now sir, just so we're clear here, when you said that scientists agreed with Brown & Williamson's position as stated in this document that cigarette

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smoking -- it hasn't been proved that cigarette smoking causes lung cancer, the American Heart Association does not agree with Brown & Williamson's position; does it, sir?

A. I have to say that if you ask the American Heart Association to identify why it is that cigarette smoking might cause heart disease, they would say, well we don't definitively know, it hasn't actually been established in a laboratory, the mechanism isn't understood, but we as an institute have concluded. And that, I think, is true of any institute you could reference me to, that we still don't understand the mechanisms of disease sufficiently well to be able to say definitively that cigarette smoking is the cause, despite the fact, of course, there is a lot of statistics which actually point in that direction.

Q. Move to strike as non-responsive.

Sir, did you hear me ask about mechanisms? I just want to make sure we're communicating.

A. Well I thought I was giving you a direct --

MR. McCORMICK: I object to that, Ms. Wivell.

MS. WIVELL: I object to your interrupting the ans --

MR. McCORMICK: That is not necessary.

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MS. WIVELL: -- the answer, counsel.

MR. McCORMICK: I object. That is not necessary. That is out of line. You get sarcastic with this witness and we're going to terminate this deposition.

MS. WIVELL: No, you're not, counsel.

MR. McCORMICK: All right. Let's just go on, Ms. Wivell. I don't want any more sarcasm here, it's not appropriate. Ask your question.

Q. I'm sorry, sir. Did you --

I'd like an answer to my question. Did I ask you about what the American Heart Association thought the mechanism one -- was? Did you hear that question?

A. Well I -- I heard that you asked me that whether or not these institutes supported my position, and I tried to explain to you as best I could why I thought they would.

Q. All right. Let me ask the question a little bit differently. Isn't it true that it is the policy of the American Heart Association that cigarette smoking causes disease?

A. I've given you my answer on that already. I think that is the decision they may have reached based on the evidence currently available to them,

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but if you ask them the question could they kindly point to the mechanism by which this occurs or could you please point to a laboratory experiment which supports that conclusion, unfortunately we haven't got there yet.

Q. Move to strike the non-responsive portion of the answer.

Sir, you would agree that the American Cancer Association's policy is that cigarette smoking causes disease; right?

A. I think I've already said that you could point me to many institutes who would take that position based on the statistical evidence.

Q. Now sir, you would agree that the American Lung Association's policy is that cigarette smoking causes disease; right?

A. I just would repeat my previous answer.

Q. The answer is yes; isn't it?

A. My answer is that I'm sure you could point me to many institutions who take that view based on the statistical evidence.

Q. Now sir, have you spoken with the American Lung Association about what -- what they base their policy on?

A. Personally, no.

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Q. Ah. So you really don't know whether they base it just on alleged statistical evidence; do you, sir?
A. Well I know that no mechanism has been established, because if there was a mechanism, we would all be on a -- on a new footing where we could identify what it was about cigarette smoking that caused this statistical association and we would be able to develop cigarettes that hopefully did not cause that statistical association.
Q. Now sir, you're aware that the American Public Health Association has taken the position that cigarette smoking causes disease; right?
A. I'm sure you will point me to many such institutions who take that view based on the statistical -- the statistical association.
Q. So the scientists that you referred to earlier when you said scientists agreed with you, you weren't referring to those scientists; were you, sir?
A. Yes, I believe I was.
Q. Oh, okay. Just so we're clear.
Now can you explain to us why those particular organizations are on an enemies list that Brown & Williamson has?
A. Well I certainly don't regard them as enemies, no.

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Q. Well why does this document refer to them as adversaries then, sir?
A. Well perhaps you could point to me where you're referring to.
Q. Well I'm referring to the page of Exhibit 1493 that ends -- that begins -- or ends with Bates number 793.
A. 793.
MR. McCORMICK: Counsel -- sorry.
Q. There is a list that is entitled "ADVERSARIES" -- "THE ADVERSARIES" beginning on this page; right?
A. There's a heading which says "ADVERSARIES" certainly.
Q. All right. And on this list of adversaries is the American Cancer Association; isn't it, sir?
A. Well again, you'll have to point me to where that appears.
Q. All right. How about the page that ends with Bates number 796.
They're on the list of adversaries; aren't they, sir?
A. The American Cancer Society certainly appears under a heading.
Q. All right.

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A. As a heading, I should say.
Q. As does --
A. Sorry.
Q. As does the American Health Association; doesn't it, sir?
A. Again are you going to point me to that page?
Q. Yes, sir. Turn to the page that ends with Bates number 798.
A. That also is a heading in this document, yes.
Q. And there the American Health Foundation is listed under the list of Brown & Williamson's adversaries in this document, Exhibit 1493; right?
A. Well, I think -- I hope you're not going to make the point that you think that Brown & Williamson regards these people as adversaries, because I certainly do not.
Q. So just because it's -- they're listed under the heading "ADVERSARIES," Brown & Williamson doesn't believe they are. Is that your testimony, sir?
A. Well I think the CEO of Brown & Williamson has a position on that, and they're not adversaries, no.
Q. Okay. Just -- just so we're clear, this list of adversaries in this document that Brown & Williamson put out, Exhibit 1493, also includes the American Public Health Association; right?

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A. Again, are you going to point me to the appropriate Bates page?
Q. Yeah. Right under the American Lung Association on page 799.
A. It talks about the American Health Association as being --
Again, it's a heading in this document.
Q. Yes. And it's a heading in this document under "THE ADVERSARIES" category heading; isn't it, sir?
A. Well I think I'll just repeat what I said earlier here, that the CEO of Brown & Williamson today does not regard any of these organizations as adversaries. They may be proponents of an anti-smoking position with which we may or may not agree, but I don't think we regard them as adversaries.
Q. All right. How about the World Health Organization, do you regard them as an adversary, sir?
A. Again they would be proponents of anti-smoking positions with which we might not agree, but I don't personally regard them as adversaries.
Q. All right. Well they're on the list of adversaries at the page that ends with 804; right?
A. I'll turn to the page and tell you.

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There is a further heading, "WORLD HEALTH ORGANIZATION," that's right.

Q. And -- and it appears under "THE ADVERSARIES" heading; doesn't it, sir?

A. It doesn't appear in quite the same way as other headings, but I assume it's all still part of the same section. I'm perfectly prepared to accept that it is.

Q. And on that very same page it lists the American Dental Association, the American Public Health Association, the American Medical Association under "THE ADVERSARIES" portion of this document; doesn't it?

A. I can only repeat what I said earlier. They may well be proponents of anti-smoking positions with which we disagree, but I don't regard them as the CEO of Brown & Williamson to be adversaries of Brown & Williamson Tobacco Corporation.

Q. All right. Well the next --

Two pages over there's a listing of federal government organizations under "THE ADVERSARIES" portion of this document; right, sir?

A. Again, I don't know whether it's the same section or not, but there is certainly a heading that says "FEDERAL GOVERNMENT."

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Q. Well under the heading "FEDERAL GOVERNMENT, Department of Health, Education and Welfare," this is paragraph 68; right?

A. I'm sorry?

Q. You see the number 68 under the paragraph?

A. Oh, to the right-hand --

In the right-hand column?

Q. Yes, sir.

A. Yes, I see that.

Q. All right. And that's paragraph 68 under "THE ADVERSARIES" heading of -- section of this document; isn't it, sir?

A. I think I said I was perfectly prepared to accept that these would appear under the heading that you''ve referenced, but the Brown & Williamson CEO sitting here before you does not regard any of these organizations as adversaries.

Q. All right. Well how about the Food and Drug Administration, do you regard them as adversaries, sir?

A. No, we don't.

Q. They're listed in this document; right?

A. Yes, they are.

Q. The Public Health Service, they're listed in this document; right?

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A. Many of the organizations, if not all of them, probably are proponents of anti-smoking positions with which we probably don't agree, and therefore they have been grouped together as individuals with whom we probably would have debates and discussions. But I don't personally regard any of them as adversaries.

Q. Well sir, they're listed under "THE ADVERSARIES" category along with the Public Health Service and the National Cancer Institute, right?

A. So you keep saying, yes.

Q. Well actually, no, so Brown & Williamson keeps saying; right, sir?

MR. McCORMICK: In 1979.

Q. This is a Brown & Williamson document; isn't it?

MR. McCORMICK: I -- I object to this continued line. You're referring the witness to a 1979 document, Ms. Wivell.

A. You are referring to a 1979 document, and I'm sitting here before you now in 1997, and I have told you what I believe to be the position of Brown & Williamson.

Q. Just so we're clear, we're absolutely clear, this is a Brown & Williamson document; isn't it, sir?

A. Well I haven't seen it -- I have --

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Well I haven't had a chance to study it to tell you whether I have seen it before. I may have seen paragraphs from it before. Whether it was distributed and to whom, I don't know. What its -- what its status is, I have -- I really couldn't tell you.

Q. You saw this document in a previous deposition; didn't you, sir?

A. I think I told you that I saw something which was presented in a similar way in terms of the column to the right and the way that the words appear on the page. And I've been looking through it to see if I could find the paragraph that I was referred to in the previous deposition, but I have yet to find it.

Q. Well sir, actually weren't you referred to this very list we just talked about in your previous deposition?

A. I was referred to --

I was asked the question in a previous deposition whether I regarded these -- many of these organizations as enemies, and then the question was also asked did I regard them as adversaries, and I gave the same response I've given you. But I wasn't shown a document, I don't believe.

Q. Was this document ever retracted, sir?

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A. I'm sorry?
Q. Did Brown & Williamson ever retract the statements made in Exhibit 1493?
A. Well I'm not sure this document was ever issued, so whether or not it was retracted I think would be a moot point.
Q. Well sir, can you direct me to a particular document that says that, A, this document, Exhibit 1493, was never issued?
A. Well if it's the same document -- I'm having a little trouble because I can't actually find the paragraph that I was referred to in an earlier deposition, and it was indeed the deposition in Broin, not the deposition in the AG's case in Florida or in Texas -- then I did subsequently make some inquiries as to whether or not this document had ever been issued, if it's the same document, and no -- nobody could tell me that it had been.
Q. And nobody could tell you that it hadn't been; isn't that true, sir?
A. Well no one had any recollection of the document whatsoever, so I'm afraid I'm not able to give you a lot of help on the matter.
Q. And in your inquiry, did you come up with a single document that showed that any of the

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statements in here had been retracted?

A. Well they were --

I found no evidence that they'd either been issued or retracted.

Q. Now sir, isn't it true that in the Frank Statement, Brown & Williamson promised to always cooperate closely with those whose task it was to safeguard the public health?

A. Yes, and I believe to the best of our ability we've done that.

Q. All right. And so it's your testimony that Brown & Williamson has worked closely with those organizations that are listed on this adversaries list; right?

A. I believe we have always responded fully to our obligations as stated in the Frank Statement.

Q. I move to strike as non-responsive. My question is different, sir.

A. I think the Frank Statement was different too.

Q. Let's get the Frank Statement out, because I'm not going to --

I don't want anyone implying that I'm misstating something.

A. Thank you.

Q. The Frank Statement says at the bottom of the

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left-hand column, "We always have and always will cooperate closely with those whose task it is to safeguard the public health." Right?

A. That's what it says.

Q. And sir, I'm asking you again: Did Brown & Williamson work closely and cooperate with those people -- or those organizations who are listed on "THE ADVERSARIES" list in Exhibit 1493?

A. Well I think, if I may say so, you -- you aren't actually accurately reflecting what it says in the Frank Statement. The Frank Statement says, as you just so dictated it, "We always have and always will cooperate closely," it doesn't say "work closely," and if we've been asked to cooperate with any health authorities, I believe we always have done so.

Q. Let me rephrase the question.

Is it your testimony that Brown & Williamson always cooperated closely with those people -- those organizations that are listed under "THE ADVERSARIES" section of Exhibit 1493?

A. If they were public health -- those --

If they were individuals who qualified as being organizations -- rather I should say: If they were organizations which could be regarded as having the task of safeguarding the public health, to my

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recollection of the list you read was, that they would broadly fall within that category, then if we'd been asked to close -- to cooperate with them, we have always done so.

Q. Sir, --

A. Fully.

Q. -- among the organizations on that list was the Food and Drug Administration; right?

A. Food and Drug Administration, yes, indeed.

Q. Among the organizations on that list was the Department of Health, Education -- or I'm sorry, the Department of Health and Human Services; right?

A. That's right.

Q. All right.

A. Two organizations with which we have closely cooperated.

Q. All right. And among the people listed was the secretary -- I'm sorry, the Surgeon General of the United States; right?

A. Correct.

Q. Now sir, would you explain, then, if there was such a close cooperation, why Brown & Williamson did not disclose the Battelle research that it had in its possession in 1964 to the Surgeon General when the Surgeon General was preparing the initial report?

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A. I should be happy to do so, or give you my understanding of that, which is, indeed as I think I testified yesterday, that we asked independent scientists outside the group whether or not it was -- it was -- those reports were of a sufficient quality to be published. And indeed I believe -- my understanding is that we actually actively wanted to have a positive response to that question because we wanted information about the, in Sir Charles Ellis's terms, the beneficial or beneficent ben -- aspects of nicotine to be before the Surgeon General's committee.

We did, of course, provide a whole dossier of other documents. The Battelle ones were told -- we were told by external individuals who reviewed them were not of that quality, and therefore, my understanding is that we decided not to.

Q. Now this understanding --

What document did you read this in, sir?

A. I've been shown a number of documents, but I saw some exchanges of -- telex, I believe, and --

I can't tell you exactly the documents I studied --

Q. Did you --

A. -- to gain that understanding, but I have seen

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several documents and spoken, of course, to several people.

Q. Can you point me to a specific document that says that?

A. That is the understanding that I have obtained from reviewing both documents and also having discussions with people.

Q. But you can't direct me to a specific document from a specific person that says what you just alleged; right?

A. Well I think I've --

As I said, I gained that understanding from a review of documents, and also in discussions with various people who made a study of this issue.

Q. Do you have those documents with you, sir, so you can share them with the ladies and gentlemen of the jury?

A. Well I --

You didn't ask me to bring any documents with me, Madam Counselor.

MR. McCORMICK: Yeah, I'm going to object counsel. We've produced a raft of documents relating to this issue and we were not requested to bring them here. It's really an unfair question.

Q. Sir, isn't it true that there is not one single

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document that says what you just said?
A. No, I believe there's a number of documents that refer to what I've just said, and support -- and support what I've just said.
Q. Who wrote them, sir?
A. I can't recall now.
Q. Well who showed them to you?
A. I've seen them in the course of preparing for depositions, and also to have a better understanding of the history of the industry in which I'm now a member.
Q. And what was the name of this independent scientist who allegedly made this recommendation that this important information not be shared with the Surgeon General of the United States?
A. Well I believe there were two scientists, not one, but I can't recall either of their names off the top of my head. But I doubtless could --
I do recall being told their names, but I just don't recall what they are today.
Q. Now sir, this document, Exhibit 1493, tells people that the case against tobacco is not closed; doesn't it?
A. Well I think we've just been debating that. I don't know where you're specifically referring me in

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the document, --

Q. Why don't you --

A. -- but if you'd like me to, I can certainly take a look.

Q. Why don't you look at page 746.

A. Uh-huh.

Q. There it -- it says, "SMOKING AND HEALTH -- THE PROPER PERSPECTIVE, question mark;" right?

A. Yes.

Q. All right. As the last paragraph of the first -- I'm sorry. The last sentence of the first -- strike that.

The end of the first paragraph refers to "the fervent desire by many zealots to suggest otherwise," and goes on to say, "The case against tobacco is not closed." Right?

A. That's what it says.

Q. And isn't it true that the industry, the tobacco industry worldwide, has gotten together and decided that it was important to stress to the public that there was a so-called controversy and that the case was -- against cigarette smoking was not closed?

A. No, I don't believe that's the case at all.

Q. Are you as sure about that, sir, as you're sure about the information you just gave us about the

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Battelle report?
A. I'm not sure what you mean by that question.
Q. Well, isn't it true that within B.A.T Industries and the BAT Group, it was decided that there was a need to stress the fact that there was no scientific proof of causation and that a controversy remained?
MR. McLAUGHLIN: Object to the form.
A. I -- I don't know what you're referring to, so you'll have to point me to something.
Q. Well sir, did you attend a meeting of the B.A.T Industries board on March 6, 1984?
A. I may have done, but I don't recall doing so. I think I was in -- in Sierra Leone, West Africa, at the time.
(Plaintiffs' Exhibit 1494 was marked for identification.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1494, this is a document that bears the Bates number 100430651 on the first page; right?
A. That's correct.
Q. And according to the heading of the document, it was a talk on smoking and health to the B.A.T Industries board -- I'm sorry.

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According to the top, it says "TALK ON SMOKING AND HEALTH TO THE BAT INDUSTRIES BOARD," March 6, 1984; right?

A. I think you were right the first time, "B.A.T Industries Board." But never mind, that's what it says.

Q. No periods between the B and the A; right?

A. If that's --

MR. McLAUGHLIN: Objection to the form.

A. I mean I think it would -- if that --

If someone in B.A.T picked that up and read it, they would refer to it as the B.A.T Industries board. That's all I can tell you.

Q. But sir, there's no periods there; are there? It's just "B-A-T;" right?

MR. McLAUGHLIN: Objection, asked and answered.

A. I can't see any periods. It's a photocopy; they may be there.

Q. Now why don't you read the first couple of paragraphs to yourself.

A. Okay.

I read the first two paragraphs.

Q. All right. This is a talk that was given to the B.A.T Industries board on the issue of smoking and

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health; right?

A. Well it appears to be so.

Q. All right. Now would you turn to the page that ends with Bates number 655.

A. Yes.

Q. And there is a heading entitled "Competitor Action;" right?

A. Yes.

Q. Would you read that, as well as the --

Read that, please.

A. Just that paragraph? Yes, I've read it.

Q. All right. Sir, it talks about advertising that R. J. Reynolds had taken out throughout the United States; right?

A. It does.

Q. And it talks about the fact that there was considerable industry concern over that advertising; right?

A. It says that industry concern is being expressed, considerable industry concern is being expressed, yes.

Q. All right. Now one of the concerns was the fact that the existence of the campaign might be damaging if it were construed under the law as misleading the public on the true nature of the risks involved;

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right?

A. Yes, that's what it says.

Q. And then it says, but on the other hand "...the campaign," quote, "is in line with the need of industry to stress the fact that there is no scientific proof of causation, thus maintaining the controversy." Right?

A. That's what the words say.

Q. Now sir, let me ask you again: Isn't it true that the tobacco industry believed jointly that it was necessary to keep the controversy about smoking and health alive?

MR. McCORMICK: Objection.

A. I think you have to define --

Well you have to distinguish, perhaps I should say, between ensuring that we didn't lose sight of the fact, and maintain the awareness among the scientific community that there was still issues outstanding in terms of understanding the science underlying smoking and health. And what I think you are trying to imply, which I would disagree with entirely, that we were somehow trying to persuade consumers that there was a controversy.

Q. Well sir, the advertising campaign that's referred to here was aimed directly at consumers;

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wasn't it?

A. I'm not familiar with the advertising campaign. I think I've already testified that I was in West Africa at the time.

Q. Sir, would you turn to the page that ends with Bates number 657.

A. Certainly.

Q. There is reference to INFOTAB under "Industry Associations;" right?

A. Yes, INFOTAB'S the first word under that section.

Q. All right. Now it says here, "INFOTAB has become very much stronger in the past 1 to 2 years (partly as a direct result of BAT efforts and initiatives) and the policy now is to rely wherever possible on INFOTAB, and the National Manufacturer Association's...to support overseas companies;" right?

A. That's what it says, yes.

Q. All right. Now do you have any information that contradicts what's said here?

A. No, I have no information to contradict it or support it.

Q. All right. Well sir, isn't it true that -- that after 1984 the BAT Group companies did participate

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and rely on INFOTAB?

A. I'm not really very familiar with INFOTAB. I believe it was an information clearinghouse of some sort on smoking-and-health issues, maybe other tobacco issues, but I -- I -- I can't directly testify to it because I -- I don't have any direct knowledge.

Q. And sir, isn't it a fact that INFOTAB provided a spokespersons' guide to be used by company -- companies that were members on the smoking-and-health issues?

MR. McLAUGHLIN: Objection.

A. It's entirely possible, but I'm not directly familiar with that.

Q. And isn't it true that that spokespersons' guide stressed that it was the spokespersons' responsibility to keep the controversy alive?

A. Again I would have to repeat my previous testimony. I'm not directly aware of the document you're referring to.

(Plaintiffs' Exhibit 1495 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1495, this is a document bearing

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the Bates number 506290473; right?
A. That's correct.
Q. All right. And it is a memo to a distribution list regarding "Update of 'Spokespersons' Guide;'" right?
A. Again that's what it says, yes.
Q. All right. And we know from the letterhead that it came from INFOTAB; right?
A. Yes, we do.
Q. All right. Now the first page says, "Please find enclosed the latest up-date of the 'Spokespersons' Guide;'" right?
A. Yes.
Q. And it goes on to say -- to talk about the content of the guide; right?
A. Uh-huh.
Q. You have to answer out loud.
THE REPORTER: Your answer?
A. I'm sorry. Yes, I --
It goes on to talk about the content of the guide.
Q. And then it says, "We would like to remind you that this material is of a sensitive nature and should be treated accordingly." And then says, "The Spokespersons' Guide should not be reproduced...."

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Right?

A. Where do you see that? I'm sure it does say it, but I can't see it offhand.

Q. Right under the -- in the paragraph --

A. I have it.

Q. -- right under "WARNING LABELS."

A. I have it, counselor, yes.

Q. Just so we're clear, it says, "We would like to remind you that this material is of a sensitive nature and should be treated accordingly;" right?

A. Yes.

Q. And then goes on to say, "The Spokespersons' Guide should not be reproduced...;" right?

A. "...partly because" it says, "we need to keep track of the recipients in order to send them updates."

Q. All right. But also because it was very sensitive; right?

A. I have no idea what other reason would be attributed to its since -- to -- to why it should be kept close otherwise than perhaps it was to be used by qualified people who were able to use it to state positions about smoking and health and that it was -- if it was to be taken out of context it might be misunderstood.

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Q. All right. Well among the positions that were addressed in this was --

There was a section on health; right?

A. There appears to have been, yes.

Q. There was a section on addiction; right?

A. In -- in question mark --

In quotation marks, rather, yes.

Q. All right. Let's take a look at the next pages. They include the distribution list of people who received this spokespersons' guide; right?

A. So it seems.

Q. And on the first page of the distribution list it shows that someone from R. J. Reynolds received a copy; right?

A. I'm looking for it.

Q. Do you see reference to Mr. Oldaker --

A. Oh, yes.

Q. -- from RJR R&D; right?

A. Yes.

Q. RJR refers to R. J. Reynolds; doesn't it, sir?

A. I imagine so, yes.

Q. All right. That's typically the way it's referred to in the industry?

A. Yes.

Q. All right. If we turn to the next page we see

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that Mr. Humber of Brown & Williamson received a copy of that; right?

A. Yes, appears so.

Q. And Mr. Kloepfer; right?

A. Yes. Whoever he was.

Q. All right.

A. Or is.

Q. You recall his name from earlier in the deposition, he was the recipient of a document that dealt with the subject of addiction?

A. I don't directly remember that, but I -- I certainly don't need to be -- to go back. I'm sure, if that was the case, I -- I accept it.

Q. All right. And you see two names from Philip Morris or P.M. U.S.A.

A. Yes. That's right.

Q. All right. And if we go to the next page we see that Mr. Ely from B.A.T received a copy; right?

MR. McLAUGHLIN: Objection to the form.

A. That's what it seems to suggest, yes.

Q. All right. Well his name is listed there.

A. But he is, of course, a BATCo employee.

Q. All right. Also there's reference to Mr. Wilst -- or Whist, W-h-i-s-t, from Philip Morris getting a copy?

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A. Yes, there is.
Q. And there's reference to Mr. Hoel from Shook, Hardy & Bacon getting a copy?
A. Yes, there is.
Q. All right. And that's in addition to probably at least 30 other individuals at companies from throughout the world who received a copy of this document; right?
A. Probably.
Q. All right. Have you ever seen the spokespersons' guide that was enclosed, sir?
A. Certainly don't recall having done so.

(Plaintiffs' Exhibit 1496 was marked for identification.)

BY MS. WIVELL:
Q. All right, sir, showing you what's been marked as Plaintiffs' Exhibit 1496, this is a spokespersons' guide dated October 1987; right?
A. It appears to be, yes.
Q. All right. And if we go back to the INFOTAB letter with that distribution list, Exhibit 1495, we see that the letter is dated October 5th, 1987; right?
A. Yes.
Q. All right. For the record, Exhibit 1496 is a

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document bearing the Bates number 506290478; right?
A. Correct.
Q. It would appear to be the spokespersons' guide that's referred to in the previous exhibit; doesn't it, sir?
A. It could very well be.
Q. All right. Now let's take a look at the preface of this document that begins on page 481. There the first paragraph says, "Those connected with the tobacco industry are often confronted with claims about smoking and health or other Industry-related issues," right?
A. Yes.
Q. Goes on to say, "This manual was developed to provide a reference for some of the most frequently-made claims as well as response -- possible responses;" right?
A. That's what it says.
Q. All right. You have no information that contradicts what's stated here; do you, sir?
A. Do I have any information that contradicts it? No, I don't.
Q. All right. Would you turn to the next page, sir. There is a heading "FRAMEWORK dash HEALTH;" right?

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A. Yes.
Q. And it says, "THEIR AIM: To establish that the scientific case against tobacco is closed." Right?
A. "THEIR AIM," yes. To whom does "THEIR" refer?
Q. All right. And then it says "YOUR GOAL" underneath that; doesn't it, sir?
A. I see, yes.
Q. And under "YOUR GOAL" it says, quote, "To maintain that a continuing scientific debate exists." Right?
A. That's what it says, yes.
Q. Sir, isn't it a fact that this document was sent throughout the tobacco industry so that it could be used publicly to assure people that there was a debate about whether cigarette smoking caused disease?
A. I don't have any way of knowing whether that was the purpose of this particular document, but all I would say is that I think that the intent of documents like this was to be in a position to respond to the scientific community or to governments who have raised issues on matters relating to smoking and health.
Q. And --
A. And I would have thought that would be the prime

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purpose of such document, not to broadcast views to the public at large that a -- that a con -- or make them aware of the fact that a continuing scientific debate exists, albeit that one does, of course, exist, --

Q. Well sir, --

A. -- as we discussed earlier.

Q. -- this document was also intended to be used in conversations with media; right?

A. I don't know. I imagine maybe if we were asked a specific question by the media, this would be of assistance in trying to ensure that we responded appropriately.

MS. WIVELL: Why don't we take a break.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MS. WIVELL:

Q. Sir, I want to go back just for a couple of questions about Exhibit 1493, the document "TOBACCO: Issues/Answers/ and Actions" that we were talking about earlier.

A. Very good.

Q. Do you have it, sir?

A. Yes, I have it in front of me.

Q. All right. According to this document, what's

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written in it, it was intended for private circulation. That's what it says; right?

A. I believe, according to the face of the document, it was intended to be circulated to, presumably, senior employees of Brown & Williamson. But as I said earlier, I really don't have any knowledge of whether it ever was.

Q. But this document clearly was not intended to be a public document; was it?

A. I would imagine not.

Q. All right. Now you said earlier when we were talking about it that today, in 1997, you have no reason to believe that those organizations listed on "THE ADVERSARIES" list were Brown & Williamson's adversaries; is that right?

A. Sitting here today, I -- I think I -- what I actually said was that they certainly are proponents of anti-smoking positions, and as such, you know, we might debate with them whether or not we agreed with them on any particular issue, but I personally, as Brown & Williamson's chairman and CEO, do not regard them as adversaries, no.

Q. Now sir, you weren't with Brown & Williamson in 1979; were you?

A. No, I wasn't.

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Q. All right. And you don't know whether the company had a contrary position in 1979 than that which you've stated today; do you?

A. I'd be extremely surprised if they had any view different to mine, but it is entirely possible I suppose.

Q. Who was the corporate president -- or I'm sorry.

Who was CEO in 1979?

A. I would guess it was Wally Hughes, but I'm not entirely sure.

Q. And you haven't talked to Dr. Hughes about what his position was in 1979 with regard to those -- those organizations that are listed on this document under "THE ADVERSARIES" list?

A. I believe he died in 1987 or thereabouts, so no, of course not.

Q. All right. Now the let me ask you this, sir: If your company --

If Brown & Williamson believed that cigarette smoking caused disease, and other tobacco manufacturers believed differently, that it did not, would your company, Brown & Williamson, tell the public that cigarette smoking caused disease?

A. If we had scientific evidence --

Can I just explore your question a little

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further?

Q. Yes, sir.

A. If we had scientific evidence that established to our satisfaction that the -- the scientific case against smoking had been proven?

Q. Yes, sir.

A. Would I go forward and make that public?

Q. Yes, sir.

A. Yes, I would.

Q. All right. Despite the fact that other tobacco manufacturers thought to the contrary; right?

A. I wouldn't give a damn what other manufacturers thought.

Q. All right. Well if it had been proven to your satisfaction that cigarette smoking was addictive and other tobacco manufacturers thought to the contrary, would you tell the public that cigarette smoking was addictive?

A. Again, if I formed a conclusion based on the support of my scientists or external scientific evidence that I had been wrong, that my common-sense view on the use of the word "addiction" in relation to tobacco smoking was now wholly appropriate as to be -- as opposed to being wholly inappropriate as I see it, would I go forward and make that statement

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public? Yes, I believe I would.
Q. All right. Now sir, would it be fair to say that you, speaking here on behalf of Brown & Williamson today, do not believe that cigarette smoking causes disease?
A. I don't make that statement, no. I say that it's perfectly possible that smoking -- cigarette smoking does cause disease. What I say is that the scientific case against smoking has not been proven. There is substantial scientific -- I beg your pardon, substantial statistical association has been demonstrated time and time again by empidemiologists that there are strong correlations between smoking and certain diseases, and we certainly sign up to that.
Q. All right. Well is it reasonable for smokers to believe what you believe?
A. Is it reasonable to believe? I mean I -- I can't really put myself in every -- the shoe of every smoker and determine if it's reasonable or unreasonable for that individual, but I certainly hold that view and I hope -- I hope it is a reasonable view, and therefore I should suppose others could hold an equally similar view and believe themselves to be reasonable.

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Q. Well sir, let me ask you this: Has there been a single person at Brown & Williamson that ever believed that cigarette smoking caused disease that you can identify for us?

A. I can't identify anybody for you, but I'd be very surprised if there were not people within Brown & Williamson who thought that smoking caused disease.

Q. Well, do you believe that cigarette smoking has injured anyone?

A. Has cigarette smoking injured anyone?

Q. Yes, sir.

A. Well I think consistent with what I've just said in response to your earlier question, it's entirely possible because there are strong statistical correlations between smoking and ill health, and cigarette smoking is a risk factor for a number of diseases. So it's entirely possible.

Q. What do you mean by "risk factor," sir?

A. I mean that the epidemiology that has been undertaken over the years has consistently shown that there is a correlation, a correlation which differs from study to study, but nevertheless a correlation consistently, that there are associations between people, populations of people who smoke and incidence of disease within those same populations.

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Q. Now how big is this risk?
A. Well that is very difficult to quantify, and none of the epidemiological studies actually do quantify the percentage of the risk otherwise than to indicate that, you know, among the lifestyle factors, smoking will be one, and there will be many others in that population that have other lifestyle factors that are known to -- to give -- known to be associated with ill health. And so, therefore, dividing one out from the other and saying, well, what does the risk actually mean, is -- is very difficult to -- to do.
Q. Well are you aware of the quantification of the risks that appears in the 1988 Surgeon General's report?
A. Directly, I --
I'm sure I've seen it and been told about it in the past, but to your point, I think, if I can try to give you a direct response, the -- the risk factor has been shown variously in a number of epidemiological studies to be anywhere from a relative risk factor of two or three in some countries around the world to something like 20 or 22.
Q. Well sir, are you aware of a chart that's in the

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Surgeon General's 1988 report that ranks various risks and compares them, including, for example, smoking compared with driving while drunk?

A. Have I seen those sorts of analyses? I'm sure I have in the past, but I don't actually directly recall them sitting here today.

Q. Well you're aware, sir, aren't you, that a person is more likely to be injured by smoking, according to that table, than by drunk driving?

A. I'm not directly aware of that, no.

Q. All right. Now sir, you said it was entirely possible that there had been people injured by cigarette smoking. Am I phrasing that correctly?

A. I can't directly recall what I said, but I think I signed up to the proposition that, you know, the statistics show a strong correlation. It may very well be that science will eventually establish that indeed cigarette smoking, or aspects of smoking of some description, does actually cause disease, but we're not there yet.

Q. Well sir, how many smokers have been injured by cigarette smoking?

A. Well I -- I would imagine that you would assume, from what I just said, that it's very difficult to say. So I can't really give you an answer to that

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question.
Q. Well are there thousands of people that you believe may have been injured by cigarette smoking?
A. Well I mean the -- the government, as you probably know, at least the public health authorities, seem to be very fond of this figure of 400,000 premature deaths each year as a result of cigarette smoking. That is one statistic that's out there. That, of course, is a statistic that's based on a raft of assumptions, any one of which, if wrong, would change the number.

So as I said earlier, I think it's impossible, when you're doing epidemiology and assessing a variety of lifestyle risks, which of those lifestyle risks actually is the risk that results in the ill health that's being monitored by this -- in the study.
Q. Well sir, do you believe that there have been 400,000 premature deaths every year as a result of cigarette smoking?
A. Personally I believe that statistic is unsubstantiable, because if you look at it and try to apply similar principles to other lifestyle risks shown in the study from which that statistic was -- was pulled, you find, for example, that -- and I'm

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basing this information on testimony that was given, I believe, in a number of recent cases by a Dr. Wacker, who is a statistician and a mathematician, that you can find much higher incidence of premature death as a result of overeating, not exercising, stress, et cetera.

So as I said -- and indeed, if you add all those up, you end up with more premature deaths than there actually has been experienced in the population. So almost by definition that 400,000 figure is wrong. The difficulty is you're really talking about statistics where you're making assumptions. Unfortunately, regrettably, you can indeed count the carnage on our -- on our roads every year, I think there's 50,000 deaths as a result of motor accidents, and unfortunately it is possible to be totally accurate about that, but when you're talking about stress or -- or weight or exercise, then you're making -- having to make assumptions in -- in drawing a conclusion on the numbers.

Q. Well sir, you understand that data shows that cigarette smoking takes years off people's lives; right?

A. There are statistical studies that, as I've already, I think, signed up to fairly thoroughly, do

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show a correlation between smoking and ill health.
Q. Do you believe that cigarette smoking takes years off of people's lives?
A. I --
Does it take years off people's lives? Again, I don't know. But it's entirely possible that it is a -- a factor that may very well be shown when science does actually find the mechanism by which smoking does or does not cause disease, be shown to be one that actually could reduce your the lifespan, certainly.
Q. Do you believe it is probable that cigarette smoking takes years off of people's lives?
A. I don't know how do you define "probable?" I can only really say what I've already said, which is there is a strong statistical correlation and they're still trying to establish why that correlation exists. It's possible, I wouldn't want to say probable, but it's possible that there will be seen to be reasons why those statistics exist, but we haven't found the reason yet.
Q. Well sir, do you believe that it is more likely than not that cigarette smoking takes years off of people's lives?
A. I wouldn't like to even speculate on that.

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Q. So you just can't say one way or the other; right?
A. Well, I can only repeat what I've already said, there's strong statistical correlation, and clearly even many health authorities have signed up to the fact that these are -- this is sufficient evidence for their purposes to -- to justify them coming out and saying that smoking does cause these diseases and that smoking can -- can prematurely end your life. And that's why they, doubtless, they make those statements. But I can't be -- I can't give you any clearer evidence of that.
Q. Do you know who G. P. Mann is?
A. G. P. Mann?
Q. Yes.
A. Well there was a gentleman by the surname Mann at B.A.T Industries' head office who I -- I'm sure I've met and spoken to. But is this the man you're referring to?
Q. What was his position there, sir?
A. I can't actually recall. He was in the pensions department, as I recall.
Q. Was he an actuary?
A. I believe he was, yes.
Q. What is an actuary or what's your understanding

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of what an actuary is?

A. Well an actuary is somebody who tries to assess risks based on statistical information.

(Plaintiffs' Exhibit 1497 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1497, this is a document that begins with Bates number 107334119; right?

A. Yes.

Q. And it's from G. P. Mann on B.A.T Industries stationery; right?

A. Yes.

Q. Why don't you take a moment and review the document.

A. Okay. Thank you.

Well I -- I've read the letter. I haven't actually reviewed the -- the attachment, but you didn't ask me to do that.

Q. All right. This document, Exhibit 1497, provides some actuarial data; doesn't it?

A. It reports, if I may --

If you ask me to -- to characterize this letter, it reports a discussion that was attended by Geoff Mann, I think his name was, given by a chap called Ed

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Lew, an American actuary. So I think he's reporting what he heard at a conference.

Q. He's reporting information that's right up his alley of expertise; right?

MR. McLAUGHLIN: Object to the form.

A. I have no idea whether this was right up his alley or not, frankly, counsel.

Q. Well he's reporting actuarial data; right?

A. He's reporting a conversation or discussions he's sat in on in -- in a conference. He actually says he didn't contribute to the discussion.

Q. Well the conference was at the Institute of Actuaries; right?

A. Let's have a look. I would imagine that would be where it would be held.

Q. Well he says in the first paragraph, "I attended yesterday a short talk at the Institute of Actuaries on risk classifications, by Ed Lew, an American actuary who is an expert working for the American Cancer Society analysing the effect on death rates and life expectancy in the U.S. of various attributes, including sex, smoking and general state of health." Right?

A. That's right.

Q. And you told us earlier that actuarial data was

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his area of expertise; right? Mann's.

A. I believe Geoff was, you know, by qualification, an actuary from the best of my -- what I can recollect. He worked, I believe, in the pension department of B.A.T Industries P.L.C.

Q. All right. And according to his letter, the information he gathered showed that life expectancy for smokers -- I'm sorry. Strike that.

According to the information he is reporting here that he had gathered, smoking had a greater statistical effect on life expectancy than either ill health or gender; right?

A. Well the findings of Mr. Lew you mean.

Q. The information he is reporting here; right?

A. Yes. Well Mr. -- Mr. Lew, I think -- he --

He concludes that.

Q. All right.

A. Yes.

Q. But you would agree that what Mr. Mann says is that he -- I'm sorry, strike that.

You would agree that Mr. Mann reports that male smokers have a life expectancy 6.6 years less than male non-smokers at age 35; right?

A. As reported by Mr. Lew. And I think that's consistent with what I said earlier.

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Q. Just so we're clear here and we won't have to repeat it, Mr. Mann had been to hear this presentation by Mr. Lew and he was then repeating the information he had heard at that meeting; right?
A. Yeah. I imagine he -- as an actuary himself, he probably attended meetings of the Institute on a regular basis. He went to one that had some relevance to some -- somebody else in -- in the BAT Group, and he reported the information on.
Q. All right. And among the information he reported on was that male smokers have a life expectancy 6.6 years less than male non-smokers at age 35; right?
A. As reported by Mr. Lew, that's right.
Q. And he also --
Mr. Mann also reported that female smokers have a life expectancy 3.9 years less than female non-smokers at age 35; right?
A. According to Mr. Lew, yes.
Q. And he also reported that the difference in expectation between men and women at age 35 is 6.8 years, of which just under 40 percent is accounted for by smoking; right?
A. Again, according to Mr. Lew, that's right.
Q. And Mr. Mann concluded, quoted, "The above shows

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that smoking has a greater statistical effect on life expectancy than either ill health or gender;" right?

A. Again, I assume that's the conclusion drawn by Mr. Lew.

Q. Well that's what Mr. --

That is a direct quote from Mr. Mann's letter; right?

A. You -- you read correctly the sentence in that letter, yes.

Q. All right. Now Mr. Mann also says, "Apart from his important conclusion that smoking is the major shortener of life, Mr. Lew said he also found the work useful in dispelling myths about the significance of other factors, e.g. drink, hair dye, socioeconomic status," right?

A. That's what Mr. Lew reports, yes.

Q. Now sir, did Brown & Williamson ever share information with smokers that cigarette smoke -- or cigarette smoking shortened their lives?

A. Did we directly share that information?

Q. Yes, sir.

A. I have no way of knowing directly or indirectly. But as I said earlier, it's -- we obviously recognize that there's a statistical association and that the statistics would indicate

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that your life expectancy is reduced if you're a smoker.

Q. You --

A. Now that's broadly known in the public, the general public.

Q. But you can't direct us to a single public statement that Brown & Williamson has made, sharing, for example, the data that's contained in Exhibit 1497.

A. Well I think Mr. Lew was making a public statement to -- before the Institute of Actuaries. I'm quite sure that, you know, that information that he mentioned in a London meeting was information he had already made public in the U.S.

Q. Well I understand that, sir, but I'm asking about what Brown & Williamson did.

Did Brown & Williamson ever share the information contained in Exhibit 1497 that cigarette smoking would shorten a smoker's life? Did -- did they ever share that in a public statement which they made?

A. Do you mean did -- did Brown & Williamson make a public statement that there was an actuary working with American Cancer Association that had made those conclusions? I don't believe we did, no. But I --

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I --
Q. All right. Well then --
A. We may have done, but I doubt it.
Q. All right. Let me ask you this: Did Brown & Williamson ever make a public statement that you can direct our attention to that cigarette smoking would shorten your life?
A. Well I think we've consistently said that there is -- there's a statistical association, and those statistics, which is all that this is referring to, do indicate that smoking is correlated with ill health and may indeed, if the statistics -- if you merely look at the statistics, would -- you know, that would be a conclusion you would draw from the statistics.
Q. Where have you said that, sir? Can you direct us to a single place where that's been said publicly by Brown & Williamson?
A. Well I'm quite convinced that we have made those statements because that is -- that's our position. If we were ever asked by a journalist or any other circumstance, that would be what we would say.
Q. Well sir, you can't direct us as you sit here to one public statement made by anyone at Brown & Williamson that ever gave that information; can you,

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sir?

A. Well I haven't sought to identify whether the -- if and when such statements were made. But I'd be perfectly confident that those statements have been made.

Q. Well sir, I'd like to direct your attention to another subject, and that is the issue of youth smoking.

Now is it appropriate for a cigarette company to encourage youths to smoke?

A. If you mean by "youths," I assume you do, non-adults, I would certainly sign up to that. I think smoking is an adult custom and should -- should only be taken up by adults when they're in a position to be able to assess the risks associated with smoking.

Q. How do you define "adult?"

A. Well I think in the U.S. you define adult as 18 and older. In other countries it may be 21. I think it's 20 in Japan. I -- it depends from culture to culture.

Q. How does Brown & Williamson define "adult?"

A. Well we hold ourselves back from actually inquiring of -- of anybody who's under the age of 21 in relation to any research or other work we would

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do, and we certainly hold ourselves to that standard very rigorously.

Q. You do today; right?

A. I believe we do today and we have for the last 25 years to most -- to the best of my knowledge.

Q. All right. Why is it that you don't believe people under the age of 21 should smoke?

A. Well it's not that we don't believe that people under the age of 21 should smoke. I say -- we say that smoking is an adult custom, and if you define "adult" here as 18, then I think that would be, you know, perhaps --

We leave ourselves some leeway between the legal age of adulthood or coming of age here in the U.S. and what we regard as -- as an appropriate age in which we should be making inquiries about consumers of our products, i.e., the age of 21.

Q. Why is that, sir?

A. Why? Because we have this fundamental belief that smoking is an adult custom.

Q. Why?

A. Because it is.

Q. Well what makes it an adult custom?

A. Oh, I see. Okay. I can answer that for you.

Well because it's, as I have been trying to

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communicate all morning, obviously unsuccessfully, that smoking -- that we're aware smoking is a risk factor for a number of diseases, and that therefore if you're going to take a risk or assume a risk by -- by deciding to become a smoker, broadly that should be something that you do as an adult.

Q. All right. So would it be fair to say that it would -- that persons under the age of 21 don't have the necessary abilities to make the proper determination about whether or not they should undertake the smoking habit?

A. I think it's just, you know, appropriate that when you're in -- deciding to -- to adopt an adult custom, which we believe smoking should be, that you should be an adult before you do so.

Q. And that's always been Brown & Williamson's position as far as you know.

A. Well it's certainly my position. As far as I'm aware, that's always been our position, yes.

Q. All right.

(Plaintiffs' Exhibit 1498 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1498, this is a letter bearing

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the Bates number 660008957; right?

A. That's correct.

Q. It is a May 4th, 1979 letter written by C. I. McCarty of Brown & Williamson to the secretary of Health, Education & Welfare, Mr. Joseph Califano; right?

A. That appears to be the case, yes.

Q. All right. Have you seen this letter before, sir?

A. I don't think I have.

Q. Why don't you take a moment and review it.

A. Thank you.

I read it.

Q. Now sir, in this letter -- by the way, who --

What position did Mr. McCarty hold?

A. Well it appears from the letterhead that he was the chairman of Brown & Williamson at the time.

Q. All right. And he's writing this letter on behalf of Brown & Williamson; right?

A. Well I -- if he's the chairman, he would certainly be doing so, yes.

Q. All right. And it says in the first sentence, "Because of our policy against advertising or in any way promoting the sale of cigarettes to persons under 21, Brown & Williamson does not have at hand the

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research data and other information necessary to a responsible analysis of the suggestion made in your letter of April 26;" right?

A. Correct.

Q. Now Brown & Williamson did have, before this letter was written, information on smokers under the age of 21; right?

A. Certainly you showed me some documents earlier on which had as their source national opinion surveys, and that I guess was in the public domain.

Q. All right. Well, and Brown & Williamson also had some information of its own that we looked at earlier today which showed cigarette smoking under the age of 21; right?

A. No, I'm not aware that anything you showed me this morning was anything other than publicly available information.

Q. Well sir, isn't it true that Brown & Williamson had, at the time this letter was written to the secretary of Health, Education & Welfare, numerous documents concerning cigarette smoking by persons under the age of 21?

A. Documents that were in the public domain, but I don't think that's what Mr. McCarty is referring to.

Q. I don't think it is either, sir. And isn't it

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true that Brown & Williamson had information in its possession, at the time this letter was written, about cigarette smoking under -- by persons under the age of 21 which was not in the public domain?

A. I'm not aware of that, no.

Q. Well sir, if Brown & Williamson did have such information --

Well let me ask you this: Would it be appropriate to write to the secretary of Health, Education & Welfare of the United States and give false information?

A. I assume not.

Q. All right. You would agree it would be inappropriate; wouldn't it, sir?

A. I -- I would think it was inappropriate, and I would think that Mr. McCarty did not conduct himself in such an inappropriate way.

(Plaintiffs' Exhibit 1499 was marked for identification.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 1499, this is a 1969 "SURVEY OF CIGARETTE SMOKING BEHAVIOR AND ATTITUDES, Volume I, Analysis of Survey Results;" right?

A. Yes. I believe that's what it says on the face.

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Q. All right. And for the record, Exhibit 1499 begins with the Bates number 650340129; right?

A. Yes, I believe so.

Q. And you understand this document came out of Brown & Williamson's files; right?

A. Well I don't know, but I imagine --

If you tell me it was, I'm perfectly happy to sign up to that.

Q. Well sir, at the top it says "(B&W) PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER;" right?

A. Does that always mean it was produced by B&W? If it does, I -- as I said, I'm perfectly happy to accept the fact.

Q. All right. Sir, would you turn to the page that ends with Bates number 136.

A. Uh-huh. Yes, I've done that.

Q. There is a discussion of "SURVEY TECHNIQUE;" right?

A. "SURVEY TECHNIQUE," that's right.

Q. All right. And according to this document, it was conducted by Economic and Market Analysis Department, Eastman Chemical Products, Inc., Kingsport, Tennessee; right?

A. Correct.

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Q. Now if we look in the third paragraph of the page, Exhibit 136, we see reference to second phase of interviews -- of group interviews that were conducted with smokers and non-smokers.

A. Yes.

Q. And it says, "However, in 1969 a better insight into the habits and attitudes of the younger age smoking group was needed. So this phase of the survey was concentrated on young people ranging in age from 12 to 24 years." Right?

A. Correct.

Q. All right. Have you seen this document before, sir?

A. This 1969 document? No, I haven't.

Q. All right. Would you turn to the end of Exhibit -- or the -- I'm sorry, the page that ends with Bates number 150.

A. 150. Very good.

Q. You have it there?

A. Yes.

Q. All right. Now this document gives information about changes in women's smoking habits; right?

A. May I read it?

Q. Certainly.

A. Yes, it appears to be.

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Q. All right. It gives information that the greatest increase in the number of smokers between the ages of -- or I'm sorry, between the years 1966 and 1969 occurred in females in the age group 16 to 24 years; right?

A. That's what it says.

Q. And it gives a graph that shows that increase for the age 16- to 24-year-old smoker; right?

A. Yes, it does.

Q. Now if you turn to the next page, the page that ends with Bates number 151, there is information about the percentage of boys at age 14 who had smoked their first cigarette; right?

A. Sorry. Which page am I looking at now?

Q. 151.

A. 151, the following page?

Q. Yes.

A. Can I read it again?

Q. Why don't you take a look at the last paragraph and the graph.

A. Okay.

I've read it, and I've seen the graph.

Q. All right. There is information there prepared about the age when youngsters were first trying their first cigarette; right?

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A. Yes, that's right.
Q. And it says that "at age 14, 60 percent of the boys who were to become smokers, had smoked their first cigarette;" right?
A. That's correct.
Q. "Among the women, only 30 percent had tried their first cigarette by age 14."
A. That's what it says.
Q. And "It was two years later before the percentage of girls reached 60 percent;" correct?
A. Correct.
Q. In other words, by age 16, the information presented here is that 60 percent of -- of young women had tried their first cigarette; right?
A. By age 16?
Q. Yes.
A. Yes.
Q. And that's --
A. That's how I read it.
Q. -- supported by the graph; isn't it, sir?
A. Yes, it is.

(Plaintiffs' Exhibit 4824 was marked for identification.)

(Discussion off the stenographic record.)

BY MS. WIVELL:

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Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 4824, this is a document entitled "1969, Survey of Cigarette Smoking Behavior and Attitude." Right?

A. That's correct.

Q. Now this is actually, according to the first page, a survey of the literature from 1967 to 1969; right?

A. Yes. Volume II apparently.

Q. All right. Now the previous document, Exhibit 1499, that did not indicate it was a literature survey; did it?

A. I don't recall whether it did or didn't, frankly.

Q. Well sir, it reported original work that had been done interviewing smokers; didn't -- didn't Exhibit 1499? Let me rephrase that.

Exhibit 1499 reported original research work that had been done interviewing smokers; right?

A. Well they talk about survey techniques. I assume that -- I mean that would be one interpretation. I haven't studied it in sufficient depth to be able to confirm that to you. But I'm not going to object to that characterization.

Q. Well can you turn to page 137 --

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A. Oh.
Q. -- of Exhibit 1499.
A. Okay, thanks.
Q. And doesn't it say there, "The third step in the survey consisted of personal interviews with 400 non-smokers between the age of 16 to 20. The objective of these interviews was to develop comparisons between attitudes of smokers and non-smokers in this critical age group?"
A. That's what it says, certainly.
Q. And the page before refers to the second step including personal interviews with 1906 smokers or former smokers?
A. Well I did just reference the fact that -- that this document you showed me talked about survey technique, and I was quite happy to sign up to the characterization you gave to it, --
Q. All right.
A. -- but I wasn't able to talk to it directly.
Q. So Exhibit --
But Exhibit 1428 would be a report of a literature analysis of what was already published; right?
MR. McCORMICK: You mean 4824?
MS. WIVELL: I'm sorry. I have this

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dyslexia problem. Let me begin again.

Q. Exhibit 4824 would be a survey of already-published literature as compared with original research work from Exhibit 1499; right?

A. It -- it appears to on its face, yes.

Q. All right. Let's take a look at the page that ends with Bates number 141 of Exhibit 1424.

A. Okay.

THE REPORTER: 4824?

MS. WIVELL: 4824. Thank you. I'm sorry.

A. And we're looking at page 141?

Q. Yes.

A. All right.

Q. The heading there is "SMOKING AMONG CHILDREN AND TEEN-AGERS," right?

A. Correct.

Q. And it gives information about a survey that had been conducted in the Illinois schools; right?

A. May I read this so that I can --

Q. Certainly, sir. Go ahead.

Yes, so the second paragraph -- or the paragraph under the first heading talks about Illinois schools, certainly.

Q. And according to the information there, it was found that 44 percent of the boys and 28 percent of

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the girls had tried cigarettes at some time; right?

A. Yes, according to this --

Is it Pachman who did the survey? Yes.

Q. All right. And seven percent and two percent of the boys and girls, respectively, were already smoking regularly; right?

A. Well according to Mr. Pachman, in 1968, yes.

Q. All right. And the data that's presented here also shows that in southern Illinois schools, 53 percent of the boys in the fourth, fifth and sixth grades had tried cigarettes, while eight percent were regular smokers; right?

A. Again, according to this study, yes, that's right.

Q. All right. Now sir, isn't it true that Brown & Williamson considered the youth market to be its future in the tobacco industry?

A. No. I don't believe we did as such, no.

Q. Well sir, isn't it true that Brown & Williamson viewed the youth market as a very important segment of its Kool smoker population?

A. Well I think it's certainly true when you have a popular cigarette among adults, that it is maybe the -- the choice that non-adults will make. And that's certainly borne out today because I think

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there have been surveys taken of the most popular cigarettes among non-adults in the U.S. today and they tend to be the ones that are most popular with adults. So that may be the case.

Q. Well sir, you would agree that when you aim at adults, when you aim your advertising, there's no way to prevent younger folks from being affected by it; right?

A. Well seeing it, certainly. I -- I recognize that advertising in magazines and on billboards, obviously, that there's no way of screening age groups from actually seeing advertising, whether -- whether it be for tobacco or any other product.

Q. Well sir, would it be appropriate to specifically target advertising for those publications focused at the youth market, focused at young folk, young people?

A. I would have to think about circumstances in which that could be appropriate, but on -- on balance I would have thought if the -- if, you know, a hundred percent of the readership was under the age of 18, I would probably think that was inappropriate. In fact I'm certain -- I would certainly think it was inappropriate.

Q. Well sir, are you aware that Brown & Williamson

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in the '70s reviewed media programs to see how well they could reach the 16- to 25-year-old population segment of the market?

A. That's a fairly broad sweep of people, 16 to 25. I -- I'm not directly aware of that, no.

Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 3821, this is a document to a Mr. Pittman from Mr. R. L. Johnson dated February 21st, 1973; right?

A. I'm trying to find the date. Where do you find the date?

Q. (Indicating.) Up at the top.

A. Oh, I find it, yes. February 21, 1973. Quite right.

Q. Now sir, if we look at this document, we see it concerns Kool marketing efforts; doesn't it?

A. Again, I'll have to read it to understand what it's about. May I read it briefly?

Q. Certainly.

A. Thank you.

Well I have briefly flicked through the document.

Q. Now Mr. Pittman was the brand manager for Kool cigarettes at the time this document was written; wasn't he, sir?

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A. I'm sorry, I have no way of saying.
Q. By the way, what does it mean to be a brand manager at Brown & Williamson?
A. Well we don't have brand managers today, but I imagine the traditional brand manager is the individual who's responsible in the marketing function for ensuring that the brand is consistently marketed on a common platform and -- and that promotions, et cetera, that might be offered to consumers around the product are appropriate to the brand.
Q. Now this document refers to conclusions based on Wave XIII and the latest Black Study; right?
A. That's what it says.
Q. Now Wave XIII refers to a brand -- marketing data which Brown & Williamson had concerning waves of smokers; right?
A. I'm afraid I don't know what he refers to here.
Q. And do you know what the Black Study refers to?
A. I don't. I never heard that title before.
Q. All right. Well at point three in the bottom of the first page of Exhibit 1321, it says, "KOOL has shown little or no growth in share of users in the 26 plus age group. Growth is from 16 to 24 year olds;" right?

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A. That's what it says.
Q. And it goes on to talk on the second -- or on the third page of the document about targeting media for that particular 16- to 25-year-old age group; right?
A. You're looking at page three, paragraph three?
Q. Yes, sir.
A. Under "RECOMMENDATIONS?"
Q. Yes, sir.
A. Yes, that's what it does.
Q. All right. It says "KOOL's stake in the 16-25 year old population segment is such that the value of this audience should be accurately weighed and reflected in current media programs. As a result, all magazines will be reviewed to see how efficiently they reach this group and other groups as well." Right?
A. The 16- to 25-year-old group.
Q. Yes, sir.
A. That's what I think it's referring to, and it's a recommendation of course.
Q. All right.
MR. McCORMICK: Let me just say for the record, counsel, I think you misspoke as to the paragraph on the bottom -- page three on the bottom

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of page one. I think you said 16 to 24, I believe the document says 16 to 25.

MS. WIVELL: All right. Well I thought I said 16 to 25, but I -- or 24 -- I'm sorry. I'll accept your correction.

MR. McCORMICK: Okay. Thank you.

BY MS. WIVELL:

Q. Sir, would it be appropriate to target -- I'm sorry.

Would it have been appropriate to target -- for Brown & Williamson to target under-21-year-old smokers, as is suggested in this memo?

A. I'm not quite sure when the policy was adopted by Brown & Williamson not to promote our products to individuals under the age of 21. For sake of this discussion, I'm perfectly prepared to accept that this was -- you know, that policy had already been adopted, in which event, no, this would not be appropriate.

Clearly I -- I don't sit here with knowledge of how one in those days was able to classify audiences, media audiences. It might have been that 16 to 25 was an understood term of art within the media industry. I just don't know.

Q. All right. Well going back to the letter which

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the chairman of Brown & Williamson wrote to the secretary of Health, Education & Welfare, you would agree that, looking at Exhibit 3821, this nineteen ninety -- I'm sorry, this 1973 memo, that Brown & Williamson did have information on the sale of cigarettes to persons under the age of 21; right?

MR. McCORMICK: I'm going to object to your characterization of the letter to Mr. Califano.

A. Well can I just say that -- two things: One is I think I already acknowledged that we had information that was in the public domain. The earlier information you referred me to goes back to '69. I -- that was well before, I think, the smoking age in any of the states was raised to 18. But in any event, the information that Mr. McCarty refers to in his letter to Mr. Califano, which is what you direct me to, he doesn't specify what it is. I mean it's perfectly possible that the information that Mr. McCarty understood that he needed in order to be able to respond to Mr. Califano's suggestion was very different sort of information to the ones you just mentioned.

Q. All right. But it is clear, you would agree, from Exhibit 3821, that Brown & Williamson did have information that Kool was showing growth in the 16-

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to 25-year-old age bracket; right?
A. Sorry, which document are you referring me to?
Q. The one we just looked at that talked about focusing media programs on the 16- to 25-year-old age group.
A. Oh. Well we had some information. He doesn't reference where it comes from I don't think. Does he?
Q. Well sir, doesn't it reference this Wave XIII and the Black Study?
A. Oh, he does indeed. Yes. But again, I don't know what those studies are, whether they were internal studies or public studies.
Q. Well sir, does Brown & Williamson -- or did Brown & Williamson usually share its marketing data with the public?
A. If it was marketing data that we had ourselves requested from an outside advertising agency or polling agency, no, we wouldn't share that with the public.
Q. And one of the reasons you wouldn't do that, you didn't want to share it with your competitors either; right?
A. Well that was the thought that was going through my head, of course.

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Q. All right. That's why you paid for marketing data, right, so that you could try and gain an advantage over your competitors.
A. Well in an environment like the U.S. market, obviously information and the way you most effectively use information is one way to achieve a competitive advantage over your competitors, that's right.
Q. Sir, dir -- showing you what has been marked as Plaintiffs' Exhibit 1279, this is a "BROWN & WILLIAMSON TOBACCO COMPANY, NEW VENTURES PRODUCTS -- "PROJECT" document; right?
A. Yes, it appears to be so.
Q. And it is dated September 1974?
A. Correct.
Q. This would be the kind of -- of data, marketing data that we were just talking about that would have been private; right?
A. I have no idea. But quite possibly, yes.
Q. All right. Why don't you take a look at the introduction on the second -- oh.
Just for the record, before we do that, Exhibit 1279 bears the Bates number 680088755; right?
A. Yes, that's correct.
Q. All right. Why don't you take a look at the

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introduction.

A. Okay, I've read the introduction.

Q. All right. According to the introduction, this particular document was part of a -- an investigation of the, quote, unquote, new smoker; right?

A. Yes indeed.

Q. It was consumer research; right?

A. It seems so.

Q. And the purpose of the research was to gain insight into the perceptions, attitudes and behavior of younger recently-starting smokers; right?

A. That's what it says.

Q. All right.

(Discussion off the stenographic record.)

A. Younger to what I'm not -- I can't say. Doesn't say anything about younger to what in the introduction. I'm sure you could point me to something further in the document.

Q. I'd be happy to, sir.

A. Yes.

Q. Turn to the next page.

A. Thank you.

Q. There it talks about a total of 11 focus group interviews being conducted in cities throughout the United States; right?

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A. So it says, yes.
Q. All right. And a focus group, that was a group where a researcher would sit down with a group of people that fit a certain definition, and then ask them questions.
A. Yes. I think that's normally what happens.
Q. And then report back in the form of a report like Exhibit 1279 to whomever is sponsoring the research; right?
A. Well I wouldn't --
I mean I haven't seen the document yet, you're about to take me through it, so I -- I can't characterize it is the results of such a focus group. But, you know, I'm perfectly happy to sit here and listen to your other comments about the document.
Q. Well sir, the next paragraph says, "The program started with three group sessions in New York City -- one with young men (under 22 years of age), and one with young women (under 22)...." Right?
A. That's the second paragraph down?
Q. Yes, sir.
A. Yes, I see that.
Q. All right. They also talked to older smokers; isn't that true?

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A. That's true.
Q. All right. Would you turn to the page that ends with Bates number 759.
A. Yes.
Q. And read the findings. I think they continue on to --
Well why don't you read pages four through 11.
A. Four through 11.
Q. Yes, sir.
A. Okay.
MR. McCORMICK: Again let must just ask for the record, Ms. Wivell, this is -- there is a lot of dense, single-spaced type, seven pages of it. Is there something more specifically you could perhaps direct Mr. Brookes to?
MS. WIVELL: I'm happy with what I've done, counsel. Thank you.
Also, since there's someone I hadn't noticed in the room before, could you -- I want to make sure that we have her identified for the record and that she signed the protective order.
MS. LOUCKS: I'm Nancy Loucks and I'm with Brown, Todd & Heyburn. We're hosting the deposition.
MS. WIVELL: Have you signed the protective

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order?

MS. LOUCKS: In this case?

MS. WIVELL: Yes, ma'am.

MS. LOUCKS: I do not know.

MS. WIVELL: Well then I ask that you leave because we're required under the orders of the court to only take this deposition in the presence of people who have signed the protective order.

MR. McCORMICK: Well I believe that the -- the counsel for the Brown, Todd firm who has signed -- has signed the protective order, we'd certainly request that counsel who's our host here today and is providing this space be allowed to attend. We're not going to -- I mean we're not going to stand by that. If you insist on doing that, we can have counsel who is hosting us and providing us with these facilities leave and find a copy of the protective order and return. If that's what you would like to insist on, we'll do that.

MS. WIVELL: I --

Well I think the orders of the court require that. So I -- I apologize, and I hadn't realized you were sitting there until it was just brought to my attention, but I do believe that we're required not to discuss the contents of these documents in the

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presence of those who haven't signed the protective order. I do apologize.

THE WITNESS: Well if you want some hot coffee, Marti, I think you're going to have to wait in the future however.

MS. WIVELL: I think I probably will, but -- I'm sorry, but the judge issued the order and I am trying to live with them.

(Ms. Loucks leaves the deposition room.)

MR. McCORMICK: Let me just come back, counsel, to the previous thing. We've got seven pages of a partially-single-spaced document you're asking him to sit here with all these people and read. I just ask you if there's something more you -- more specific you could direct him to, it would save, I think, everybody time and help the process.

MS. WIVELL: Well -- and I said, counsel, I'm happy with what I've asked him to do. And I don't think it will take that long.

Are you done?

THE WITNESS: No. I haven't started. Been waiting to --

MS. WIVELL: All right. Why don't you go ahead, sir, --

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THE WITNESS: I shall indeed.

MS. WIVELL: -- please.

A. Well I haven't read all the -- all the references and quotes that the modulator appears to have felt important to write down. I have to say overall it reinforces my belief in the redundancy of market research.

But generally I have now completed the pages you asked me to read.

Q. All right. And it --

The document includes information about young people starting to smoke; doesn't it?

A. That's what it's talking about, in part, yes.

Q. All right. Talks about some of the reasons why youth under the age 21 start to smoke; doesn't it?

A. That's right.

Q. All right. And among the reasons --

MR. McCORMICK: Excuse me, counsel, do you mean 21?

MS. WIVELL: That's what I said.

MR. McCORMICK: Well I object to the characterization of the document.

A. Yes, you wouldn't normally regard someone under 21 as a non-adult, I don't think. They would be under the age of 18; wouldn't they?

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Q. Sir, it talks in here about people starting to smoke at age 14; doesn't it?
A. Yes, I think I -- I just --
I think counselor was just pointing you to the fact that maybe 21 is -- you're certainly an adult by the age of 21. Maybe you're an adult at the age of 18. I think it depends on the culture of the community in which you come from.
Q. All right. But it also gives information about people who started smoking at the age of 12.
A. It talks a lot about people's first experience in smoking. If that's what you'd like me confirm, certainly.
Interestingly, advertising isn't mentioned as one of the factors.
Q. It also indicates that many of the people, their first smoking experience took place in junior high school; right?
A. I believe so. I saw "junior high school" --
Yes. It's on the page I'm looking at, page five I believe.
Q. And among the reasons that are indicated why they started to smoke at such an early age is that they wanted to look older or more mature; right?
A. And peer pressure as well, yes.

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Q. All right. And another reason that was given was the forbidden-fruit idea; wasn't it, sir?
A. Well I guess we've all been teenagers. We know about that, yes.
Q. And sir, wouldn't you agree that if you tell someone they shouldn't do something, that may be the red flag that sets them right on the path to doing it?
A. Sometimes teenagers react in that way, certainly.
Q. And in fact in -- on the page that ends with 762 here, it says, "Smoking at that age, apparently forbidden by parents and other adult authorities, was a sign of courage and, importantly, reflected the 'us against them' attitude of the early teen years;" right?
A. Well as I said, I mean, Marti, I've been there, I'm sure you've been there, you know, this is what teenagers are all about.
Q. Well sir, are you aware of a campaign that was mounted by the tobacco industry to prevent youth -- youth from smoking, Helping Youth Say No?
A. Directly, no, I don't recall that campaign.
Q. All right. Now another reason why young people started to smoke, according to this document, was the

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idea that it would -- they would get high; right?
A. I saw some reference to that somewhere in this paragraph -- on this -- on the pages you referred me to.
Q. And on page 763 it refers to several recounted lying on the roof of the house at night and smoking one cigarette after another until they were so high they could barely stand up; right?
A. "High" in quotes, yes.
Q. And the document also said that many of the respondents, in other words, the people in the survey, denied they were addicted; right?
A. I think I saw that too, yes.
Q. And in fact, the document talks about that as being part of the traditional pattern of smoking; doesn't it?
A. I don't recall seeing those words. Perhaps you could point me to them.
Q. On page seven -- the page that ends with Bates number 766 --
A. 766.
Q. -- there's reference to the denial of addiction, and it says, "In spite of this habit denial on the part of the respondents, it became apparent that the traditional patterns of smoking were ingrained in

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them at this point."
A. That's what it says.
Q. Now sir, isn't it true that smokers traditionally do deny that they're addicted and claim they can quit at any time?
A. I can't speak for all smokers in the U.S.
Q. Well that's a claim that you've made in this deposition; isn't it, sir?
A. Well I certainly would --
If they said that, I would -- would certainly respect their point of view. I believe, and I'm a smoker, that if I have the determination to quit, I would -- I can. Indeed, I have on several occasions.
Q. Now sir, Exhibit 1279 is dated September 1974; right?
A. 1279?
September '74, yes.
Q. And it is fully five years before the McCarty letter to the secretary of Health, Education & Welfare that we looked at earlier in the deposition; right?
A. That's right.
Q. Now sir, are you aware that Brown & Williamson advertised Kools specifically toward the age 16-to-25-year group of people?

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A. I'm sorry, could you repeat the question?
Q. Certainly.
Are you aware that Brown & Williamson specifically advertised Kools directed toward the age of 16- to 25-year-olds?
A. No, I don't believe I am aware of that.
Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 4448, have you seen this document before, sir?
A. I can't see "4448" on it.
Q. I understand. It was previously marked and it's just not on your copy.
A. Oh, okay.
Q. I apologize.
A. Do this have to -- no? Sorry, okay. Again.
Q. The exhibit that I've just handed you, 4448, bears the Bates number 665076813.
A. Yes, I have that.
Q. All right. Have you ever seen it before, sir?
A. I'm not sure. I don't believe so.
Q. All right. This document is from Ted Bates New York/Advertising dated September 20th, 1975; right?
A. It appears to be so, yeah.
Q. And it's regarding "KOOL, Analysis of Brand Switching Study - Wave" -- I think it's "18."

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A. It looks like 18 to me, but it's -- as you said, the type is pretty poor.
Q. All right. Would you turn to the page that ends with Bates number 816.
A. Yes.
Q. Now it says there under "CONCLUSIONS, "Kool's effort against the 16-25 age group continues to be working."
A. Can you show me where you're speaking -- referring me to?
Q. Point one under the conclusions, sir.
A. Point one. Okay, thank you.
Q. Do you see where it says, "Kool's effort against the 16-25 age group continues to be working?"
A. That's what the words say.
Q. And the next paragraph begins with the statement, "Kool's effort is successfully attracting new smokers;" right?
A. That's what it says.
This was, of course, a period when Kool was growing in market share, I believe.
Q. All right. And it says, "While Kool's overall performance among the 16 to 25 age group is strong, it is not limited to this group in terms of starters." Right?

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A. That's what it says.
Q. And it goes on to say, "Kool's starter level is well above the average among all age groups and both sexes, with particular strength evidenced among female starters;" right?
A. That's what it also says.
Q. All right. Now you would agree that starters are important to the industry because they represent its future.
A. I would certainly sign up to the fact that it's -- you know, I would expect us to be aggressively competing for people who are in the age 21 and above who are cigarette smokers. But in other respects, no, I don't actually sign up to the fact that it's important that people start to smoke.
Q. Well, sir, first of all, this document refers to Kool's efforts against the 16- to 25-year-old age group; right?
A. Well this is a document by an advertising agency in New York, an advertising agency we subsequently sacked because some of the statements they made in the document were reported on CBS. We sued CBS and won at the time a record level of damages against CBS. I don't --
I mean I'm perfectly happy to sit here and read

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the document with you, but this is not something that I think is really going to move the needle in terms of our understanding of what Brown & Williamson was thinking about in 1975.

Q. Well sir, you would agree that Ted Bates advertising agency was an agency that was paid by Brown & Williamson in 1975; wasn't it?

A. Well I believe we -- we retained Ted Bates. It would be difficult to fire them if we had -- if we hadn't retained them previously.

Q. But they were working on Brown & Williamson's behalf at the time that document was written; right?

A. Well again it's four years -- or three years before I joined BATCo, and therefore I have no direct knowledge of that. By I assume so from the date of the document.

Q. How long did it take Brown & Williamson to sack them?

A. I don't recall.

Q. Well they worked for at least two more years; didn't they?

A. Again, I don't recall.

Q. Sir, showing you what's been marked as Exhibit 3822, this is a "VICEROY AGENCY ORIENTATION OUTLINE;" right?

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A. Apparently, from the face of the document, yes.
Q. All right. According to this document, in the first paragraph under "Procedures," "Ted Bates, the current VICEROY agency, and others will participate in a creative development and positioning assignment on VICEROY cigarettes;" right?
A. Again, that's what the document says.
Q. All right. And as a matter of fact, Ted Bates was an advertising agency that continued after 1955 working on Brown & Williamson's behalf; isn't that true?
A. I'm sorry, could you repeat the question?
Q. Ted Bates, the advertising agency that we were referring to in Exhibit 4448, continued to work for Brown & Williamson after the date of that document; right?
A. Well I -- I don't know directly, but I'm perfectly happy to say that may be the case.
Q. All right. So they weren't sacked immediately after they wrote Exhibit 4448; were they?
A. I don't believe so, no. I didn't say that.
Q. By the way, "sacked" means fired; right?
A. Oh dear. Is that another English expression that doesn't translate?
Q. Well it may. I just want to make sure that it

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does.

A. Yes.

Q. It means fired; correct?

A. It means fired, sacked.

Q. Okay. But at least according to this document, Exhibit 4822, Ted Bates was going to be involved in Viceroy advertising; right?

A. Apparently.

Q. Okay. And if we turn to page 958, we see strategies listed for the years 1972 through 1976; right?

A. Sorry, what page are you on again, 57 or 58?

Q. 58.

A. Okay. Well this is part of an ongoing section headed "Historical VICEROY Positioning and Campaigns;" is -- is that right?

Q. Yes, sir.

A. Okay.

Q. All right. I'm trying to set the -- the date of the document because it doesn't appear to be dated.

A. Oh, I was going to help you on that.

Q. Actually, the second page of the document refers to an assignment given on September 22nd, 1976; right?

A. Well I was going to say if you look at the

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schedule, you'll see that it must have been in the course of 1976, I would have thought, because it appears to be reporting actual results in '75, and there's -- the heading under '76 and '77 is forecast.

Q. Okay.

A. So I would imagine it would be '76.

Q. Now if we turn to the page that ends with Bates number 959, there is information on the Viceroy marketing strategy proposed for 1976; right?

A. "Marketing information" I think it says. Is that what you're referring to?

Q. Yes, sir.

And it lists the target audience; doesn't it?

A. Well the heading -- certainly it says "Target Audience," yes.

Q. And under the "Target Audience" is the information "Males 16 dash 35 primarily;" right?

A. That's what it says.

Q. And Brown & Williamson implemented the marketing strategy that's referred to in that document; isn't that true?

A. I have no direct knowledge of that, I'm afraid.

Q. Now sir, isn't it true that Brown & Williamson viewed Kool cigarettes as an appropriate cigarette for starters?

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A. "An appropriate cigarette for starters?" I never heard that said, no.

Q. Well sir, first of all, what's a starter?

A. Well a starter presumably is someone who hasn't previously smoked.

MR. McCORMICK: Counsel, what's your plan here for when you plan to break?

THE WITNESS: I was getting hungry.

MS. WIVELL: All right. Well I don't know what time it is.

MR. McCORMICK: Oh. It's 25 after.

THE REPORTER: It's 12:22.

MS. WIVELL: All right. I don't have that much left. I don't think I have much time left either; do I?

THE REPORTER: Approximately an hour.

THE TECHNICIAN: A little bit over.

MS. WIVELL: All right. Well can we go off the record and have this discussion?

THE REPORTER: Off the record, please.

(Discussion off the record.)

(Luncheon recess taken at 12:23 o'clock p.m.)

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AFTERNOON SESSION

(Deposition reconvened at 1:10 o'clock p.m.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 346, this is a document dated February 17th, 1987; right?

A. Yes, that's correct.

Q. All right. And it's a Brown & Williamson document entitled "KOOL ISN'T GETTING THE STARTERS." Right?

A. That's what it's entitled. It's not on Brown & Williamson notepaper, but it seems to be circulated to a number of people in Brown & Williamson, so I'm -- I'll certainly accept your characterization of it as a Brown & Williamson document.

Q. Well it says at the top of the page, "BROWN & WILLIAMSON TOBACCO CORPORATION, RESEARCH, DEVELOPMENT & ENGINEERING, INTERNAL CORRESPONDENCE;" doesn't it, sir?

A. It says that at the top, but it seems to be typed on as opposed to printed, which you would normally expect.

Q. And the individuals that are listed in the columns showing receipt of the document, they're

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people whose names you recognize as being part of B&W research, development and engineering department at the time; right?

A. No, I would have to correct that. Can I try to explain to you who -- who these folks are to the best of my knowledge?

Q. All right. Why don't you go ahead.

A. I. D. Macdonald I think was a marketing individual. Tom Whitehair was -- I'm not sure what his status was in 1987, but he's also a marketing individual. Earl Kohnhorst was in the operations function, may have had some responsibility for R&D at that time; again I couldn't be certain. I imagine M. L. Reynolds is Lance Reynolds, who we discussed previously. Tilford Riehl would be in the R&D department. J. Hendricks would be a marketing person. I don't know Tharaldson. Stowe would also be a marketing or perhaps a salesperson. And Kounnas, again I don't know.

Q. All right. Now sir, this document addresses the fact that Kool was no longer attracting new smokers, referred to as "starters;" right?

A. I haven't read the memorandum. Would you like me to?

Q. Well that's what it says in the first paragraph;

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doesn't it, sir?

A. I haven't read the first paragraph even, so --

Q. Why don't you go ahead and do so.

A. I will.

Well I see the -- see the -- see the words.

Q. All right. It says in the first paragraph, "This memo addresses the fact that KOOL is no longer attracting new starters -- smokers (further referred to as new 'starters'), a product-related reason with -- which possibly explains this position, and suggestions to correct this problem;" right?

A. That's what it says.

Q. Okay. Now, sir, Brown & Williamson took steps after 1987 to try and improve its action -- or its market position with regard to Kool and increase its purchase by starters; isn't that true?

A. I frankly don't know.

Q. Sir, I'm going to change directions slightly and ask you some questions about candy cigarettes.

A. Candy cigarettes. Okay.

Q. Candy cigarettes.

Now does Brown & Williamson lend its trademarks to makers of candy cigarettes?

A. To the best of my knowledge, no --

Well we don't today, and neither to the best of

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my knowledge we never have done.
Q. Well sir, if Brown & Williamson did lend its -- lend the maker of candy cigarettes permission to use its brand names for those cigarettes, would that be an inappropriate marketing activity directed toward children?
A. Would it be? I'd certainly have to consider the circumstances in which it happened.
For the record, just as support for what I've just said, I spent many months in my first couple of years in the legal department at BATCo aggressively pursuing people who were using our trademark on things like candy cigarettes and little tin trinkets, and pursuing what were known as garnishee orders at the time to try to collect all these up and remove them from the marketplace.
Q. Well you said you did so on behalf of BATCo. Has anyone ever done that on behalf of Brown & Williamson?
A. I would imagine so, but I frankly don't know.
(Discussion off the stenographic record.)
BY MS. WIVELL:
Q. Sir, showing you what's been marked as Plaintiffs' Exhibit 4451, this is a document bearing the Bates number 690148032; right?

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A. That's correct.
Q. And it's an October 20th, 1977 letter to the president of Four Star Candy Company from someone named Larry C. Amos; right?
A. That's right.
Q. All right. Why don't you take a moment and review the document.
A. Thank you.
I read it.
Q. Now, sir, this document was written by someone at Brown & Williamson to the president of this candy company who had been using Brown & Williamson's trademarks on their candy cigarettes; right?
A. It would appear so, yes. And without their -- without our approval.
Q. All right. Does this document tell them to stop doing so?
A. I think it signals that we're not -- not content with them doing so, yes.
Q. But it doesn't say anyplace "Stop and don't do that any more;" does it?
A. Well I read it as a pretty severe statement to that -- towards -- to that effect. Are -- are the words there? I don't know. Let me reread it.
I mean in this instance I'm not a, obviously, a

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lawyer or an attorney with any experience of practice in the U.S., but this looks to me a little bit a like a sort of letter before action, as we call them in England, --

(Discussion off the stenographic record.)

A. -- where you put people on notice of your rights, and if they don't desist, then you take proceedings. But I'm not an expert on U.S. procedure.

Q. And as you state here today, you can't tell us whether Brown & Williamson has ever sued anybody to stop them from using their Brown & Williamson trademarks on candy cigarettes; right?

A. Well I -- I can say that I would be strongly -- I would be very surprised if that wasn't the case given that, of course, you are required, in order to protect your trademarks, to jealously guard their use by other people.

Q. Well sir, isn't it a fact that Brown & Williamson had, some years before this letter, actually given written permission for a candy cigarette manufacturer to use their trademarks on candy cigarettes?

A. I have no idea.

Q. Sir, showing you what's previously been marked

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as Plaintiffs' 4452, this is a document that bears the Bates number 682068464; right?

A. Correct.

Q. Why don't you take a look at the first page --

A. Uh-huh.

Q. -- and then look through and see if you don't find some references to Brown & Williamson trademarks here.

A. This is a 1939 document. I'm not sure I'm that familiar with the trademarks that we used in 1939, although Raleigh would certainly have been one. Kind of recall Julep might have been one, because it probably refers to mint juleps and the Kentucky Derby, but I don't know. Never heard of Spud before. However, there is Kool, I think we can say that was one of ours.

Okay. I've looked through it. Did you say you wanted me to read the letter as well.

Q. Read the letter, sir, please.

A. Okay.

I've read the letter.

Q. All right. This letter, which is dated July 19, 1939, gives permission for the Consolidated Lithographing Corporation to use Wings, Raleigh, Kool cigarette brand labels for their candy cigarettes;

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right?
A. Well I think it's -- it's a request from, as I read it -- as I read it, is a request from Consolidated Lithographic Corporation to us to -- to get permission for the use of the Avalon brand, again a brand I'm not familiar with.
Q. And it goes to say, "If you will recall, you granted us this permission on your WINGS, RALEIGH and KOOL cigarette brands, the labels of which we made as per samples enclosed;" right?
A. That's -- that's what it says.
Q. Do you know if this contract was ever -- I'm sorry.
Do you know whether Brown & Williamson ever rescinded the permission that's referred to here with regard to the use of their cigarette trademarks on candy cigarettes?
A. Well I have no idea whether there was an agreement in the first place, or whether such an agreement, if it ever existed, was subsequently rescinded.
Q. Now sir, are you aware that Brown & Williamson used to pay for product placement in motion pictures?
A. I recall being challenged during a deposition that I've undertaken some reference to product

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placement, whether or not I recall ever having heard that Brown & Williamson undertook that practice or not. I'm not -- I don't recall. There were some documents I was shown, as I recall.

Q. Well do you understand that Brown & Williamson paid, for example, half a million dollars to Sylvester Stallone to use Brown & Williamson tobacco products in five of his movies?

A. That was the -- the correspondence I think that I've previously been shown.

An agreement, if this was the agreement, which he didn't perform.

MR. McCORMICK: Can we identify this?

THE WITNESS: Oh, I'm sorry.

THE REPORTER: Just a moment, please.

(Plaintiffs' Exhibit 4825 was marked for identification.)

MR. McCORMICK: Do we have another copy?

THE WITNESS: Yeah.

THE REPORTER: You do.

BY MS. WIVELL:

Q. Sir, showing you what has been marked as Plaintiffs' Exhibit 4825, this is a letter signed by Sylvester Stallone dated April 28th, 1983, Bates numbered 690132319; right?

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A. Yes, I believe that's it.
Q. All right. And this document, Exhibit 4825, refers to the fact that Brown & Williamson will pay Stallone a fee of $500,000 for use of Brown & Williamson tobacco products in five of his movies; right?
A. That's what it says, yes.
Q. Now he did use Brown & Williamson tobacco products in some of his movies; didn't he?
A. I really don't know. I -- I thought he failed to do so in any of the movies, but I don't honestly recall the circumstances.
Q. Now sir, are you aware that Brown & Williamson also paid Associated Film Produce -- Production -- I'm sorry, strike that. Are you aware that Brown & Williamson --
By the way, Brown & Williamson paid that half million dollars to Sly Stallone, didn't he -- they?
A. I -- I can't speak to that directly. My -- my recollection is that we did, and we were a little fed up because he didn't actually perform his part of the bargain. But the assoc -- I mean I -- I know very little about this affair, frankly, apart from the documents that were shown to me in the previous deposition.

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Q. All right. Now do you understand that in addition to the half million dollars, that Brown & Williamson had paid Associated Film Promotions slightly under a million dollars to place Brown & Williamson cigarettes in various movies and TV shows?
A. Was I aware of that? Not directly, no.
Q. Sir, showing you what's previously been marked as Plaintiffs' Exhibit 4453, this is an audit survey for Associated Film Promotions bearing the Bates number 685086478; right?
A. Correct.
Q. Now would you take a -- a moment and review the first page.
A. Very good.
Well I've read the first page.
Q. Okay. This document summarizes payments that were made on behalf of Brown & Williamson to Associated Film Promotions to try and get Brown & Williamson products placed in movies and TV; right?
A. Yes. I believe this is a fairly common practice among consumer goods manufacturers, and where the plot required the -- an actor to use a pack of cigarettes, manufacturers might want to pay for that to be one of their brands.
Q. All right. And according to this document,

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Brown & Williamson paid almost a million dollars to Associated Film Promotions for these product placements; right?

A. I haven't added up all the numbers, but I -- I don't really contest the figure.

Q. All right. Well if we look at the last sentence of the second paragraph of the document, it talks about "B&W payments to AFP since the inception of the contract have totaled 687,500 for special placements and 278,000 in retainers;" right?

A. Right.

Q. Let me ask you, sir: Do you believe it's Brown & Williams -- strike that.

Do you believe it is important for Brown & Williamson to do everything it can to prevent children from smoking?

A. I think we obviously have a responsibility to make sure we don't directly promote our products to non-adults, and I would certainly ascribe to that.

Q. All right. Does Brown & Williamson lobby in the state of Minnesota?

A. Do we lobby directly?

Q. Yes, sir.

A. I honestly couldn't tell you.

Q. Well is --

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Isn't it a fact that Brown & Williamson has lobbied directly in the state of Minnesota to prevent the sale of cigarettes -- to prevent a ban of the sale of cigarettes through vending machines?

A. Quite possibly, but I don't honestly --

I can't speak to that directly.

Q. Isn't it true that a large number of people under the legal age buy cigarettes from vending machines?

A. I have no direct knowledge of that one way or the other. Certainly is a legitimate way in which to market tobacco products, and --

But I certainly have no direct statistics on whether this is a way in which non-adults obtain cigarettes. It may be.

Q. Well sir, if it were shown that a large number of under-age smokers obtained cigarettes via vending machines, and that vending machine sales comprised a relatively small amount of total cigarette sales, --

A. Uh-huh.

Q. -- wouldn't it be appropriate to urge that cigarettes not be sold through vending machines if doing so meant keeping them out of the hands of under-age smokers?

A. Well in the precise circumstances you just

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described, I'd certainly have no problem going along with the proposition that cigarettes -- vending machines are not absolutely critical to our ability to market our products to our consumers.

Q. Do you know why --

A. And --

MR. McCORMICK: Wait. He wasn't done, counsel.

MS. WIVELL: I thought you were done. I apologize.

A. But, you know, insofar --

I mean we are talking about legitimate commercial interests here. Vending manufacturers -- vending machine operators, rather, do obviously have an extensive investment in vending machines, et cetera, and I suppose it may be possible that we responded to a request from them to -- to discuss the matter with legislators in Minnesota. But I know -- I don't know anything about such a lobbying, as you refer to.

Q. Do you know if Brown & Williamson has a paid lobbyist in the state of Minnesota?

A. I believe we do, yes.

Q. All right. Who is that?

A. I don't know his name.

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Q. How long has Brown & Williamson had a paid lobbyist in the state of Minnesota?
A. I couldn't tell you that either.
Q. That lobbyist has an office that Brown & Williamson maintains, doesn't it -- doesn't he?
A. I have no idea.
Q. How much has Brown & Williamson spent since 1954 on preventing youth from smoking?
A. Since when?
Q. 1954, sir.
A. I haven't added up the figures. I know we have spent a number of -- several million dollars over the recent years since I joined Brown & Williamson and became the representative of Brown & Williamson at The Tobacco Institute. We've initiated a very comprehensive youth program called We Card, which -- for which many millions of dollars have been spent by the industry. And that's very successfully, too, I believe. Over 385,000 kits have been distributed to retailers around the country, and I think the awareness of retailers and retailer staff about the need to card under-age smokers has risen significantly as a result.
Q. Now sir, I'm going to show you what's previously been marked as Exhibit 602.

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MR. McCORMICK: Do you have another copy of 602?

MS. WIVELL: I'm afraid I'm not -- I've given away so many copies of 602, I'm afraid I don't.

THE WITNESS: We'll share.

MR. McCORMICK: All right.

MS. WIVELL: Perhaps you can look on with your counsel, sir.

BY MS. WIVELL:

Q. Could you turn to --

MR. McCORMICK: Could you identify this, please?

MS. WIVELL: Oh, yes, I'm sorry.

Q. Exhibit 602 is the expert analysis of advertising R&D and youth prevention expenditures by Paul Much dated July 1997. Now sir, could you please turn --

Oh, before we turn to this, that We Card program, have sales to minors dropped as a result of that program initiated by The Tobacco Institute?

A. I believe some legislators in some states, I cannot actually recall which and where, have actually made that affirmative statement, that the We Card program has been instrumental in reducing youth

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smoking in certain markets. That's right.

Q. And when was that program instituted?

A. It was very shortly after I joined the TI, I think probably in the summer of nineteen seventy -- 1995.

Q. All right. Thank you.

Could you turn to 2.A. in Exhibit 602, sir.

A. 2.A. Is it way back here? I can't find two -- where is two?

2.A., I think I have it.

Q. All right. Beginning at the first page after the tab, do you see a heading "ADVERTISING R&D AND YOUTH PREVENTION," and then a dollar sign, "ACTUAL?"

A. No, I don't.

Q. At the top of the page.

A. Oh, "ADVERTISING R&D AND YOUTH PREVENTION, dollar" -- yes, "ACTUAL," I see that.

Q. All right. On the top of the page there is a chart entitled "Brown & Williamson." Right?

A. Correct.

Q. All right. And how much money does it -- this chart show was expended by Brown & Williamson for youth prevention in the years 1954 to 1964?

A. I'm not sure where I'm expected to look. There's a line here under the heading "Brown &

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Williamson" that talks about advertising, marketing and promotional expenditure --

Youth prevention expenditure. I find it, yes. Okay. Well it doesn't indicate that any money was spent.

Q. All right. And do you know whether any money was spent from 1954 to 1964 by Brown & Williamson to prevent youths from smoking?

A. I would imagine it very much depends on what you define as "expenditure on youth prevention." May very well have done, I have no idea.

Q. But you don't know of any money that was spent in that subject as you sit here today; do you, sir?

A. Well I have no -- no one to refer to, frankly, from the period 1954 to 1964 who's in the company as far as I'm aware who could speak to such expenditures, but I would -- I would not discount the fact that there might have been.

Q. Have you reviewed the interrogatory answers that were supplied by Brown & Williamson on this subject?

A. Have I examined interrogatories? No, I don't examine interrogatories.

Q. Turning to the next page, sir, there is information on the amount of youth prevention expenditures actually expended by Brown & Williamson

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from the period 1965 to 1975; right?

A. Well claims to be. I don't know what this document is. Whose are they?

MR. McCORMICK: Yes, could you again -- counsel, I'm sorry, but could you identify this document, the source of this document for the record?

MS. WIVELL: Oh, I already have, sir.

MR. McCORMICK: Okay. Did you identify this as a report by someone retained by you in connection with this lawsuit?

MS. WIVELL: I identified it from the front of the document. Yes, it's an expert report --

MR. McCORMICK: All right.

MS. WIVELL: -- based on the interrogatory answers provided to us by Brown & Williamson.

BY MS. WIVELL:

Q. Now, sir, directing your attention to the next page, under the heading "YOUTH PREVENTION EXPENDITURES," how much money is indicated there for -- that was spent by Brown & Williamson for the period 1965 to 1975 for youth prevention expenditures?

A. It doesn't indicate any expenditures for that period --

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Q. All right.
A. -- from 1965 to 1975.
Q. Now turning to the next page, there is information for the period 1976 to 1986; right?
A. Yes, I believe there is.
Q. All right. And it shows that nothing was expended from 1976 to 1982, but that expenditures do begin in 1983; right?
A. Yes, it appears so.
Q. All right. And if we turn to the next page, it gives information on the total amount that Brown & Williamson spent from nineteen -- nineteen seventy -- I'm sorry, 1987 to 1994; right?
A. Yes, I believe it does.
Q. And if I said 19 -- ah, I did say 1994. Thank you.

And it shows that there was some money expended by Brown & Williamson for youth prevention expenditures in 1987 and 1988, and nothing in 1989 through 1993; right?
A. According to this document, that's right.
Q. All right. And sir, what is the total amount, according to this document, Exhibit 602, that was spent by Brown & Williamson in the period 1954 through 1994 for youth prevention expenditures?

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A. Well the total shown here appears to be $642,805, which is an extraordinarily accurate figure. But that's what it says.

Q. All right. Now sir, these same graphs, if we go back to the beginning, tab 2.A., also gives some information for advertising, marketing and promotional expenditures during that same period; right?

A. I'm sorry, could you repeat the question?

Q. Yes, sir.

If we go back to the page that begins right after tab 2.A., we see that there is information that's provided about the total amount that Brown & Williamson has spent during the same period, 1954 through 1994, on advertising, marketing and promotional expenditures; right?

A. I believe I saw that.

Yes, I have that now.

Q. All right. And if we look --

If we go through the years and we come to the total, four pages in, for the amount that Brown & Williamson spent on advertising, marketing and promotional expenditures in the period 1954 through 1994, we see it is an amount of over seven billion dollars; right?

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A. Over a 40-year period. Is that right?
Q. From 1954 to 1994. Right?
A. Yeah, 40-year period. Yes, okay.
Q. Does that seem like an accurate figure to you, sir?
A. I have no way of knowing whether that's accurate or not. But seven billion dollars over 40 years, I --
Well it's entirely possible.
Q. All right. Now if we look a little bit higher on the chart, there's information on the total research and development expenditures made by Brown & Williamson during the same period; right?
A. Uh-huh.
Q. You have to answer out loud, sir.
THE REPORTER: Your answer?
A. "Uh-huh." Yes.
Q. All right. And that includes contributions to CTR; right?
A. That includes contributions to CTR, yes.
Q. And what is the total given in this document for contributions to total R&D expenditures, including contributions to CTR, for the period 1954 to 1994?
A. Let's make sure I'm looking at the right line.
Could you ask the question one more time?

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Q. Yes, sir.

What is the total amount, according to Exhibit 602, that was expended by Brown & Williamson for total research and development expenditures, including contributions to CTR?

A. Well if I'm reading this chart correctly, I have to add 99 million to 42 million, so I would say 141 million.

Q. All right.

A. But I haven't done the math directly.

Q. Right above the advertising and marketing and promotional expenditure figures, that addition is done for you; isn't it, sir?

A. Hundred and forty-two million.

Q. All right.

A. Indeed, so it is.

Q. Now --

A. This is, of course, those dollars, assumed without any reference to the -- the inflation in the value of money over the years; correct?

Q. I understand, sir. But let me ask you this question: Does --

Do the research and development expenditures that are listed here include, for example, the development of Y1 tobacco?

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A. I have no idea.
Q. All right. Do the research and development expenditures referred to here include the millions of dollars that were put into -- or that were used to put in ammonia technology?
A. Again, I wouldn't be able to say.
Q. You just don't know one way or the other; right?
A. Well no, I don't.
Q. All right. Could you turn to --
I think I have some pages tabbed. Could you turn to the first tab, sir. That's a pie chart; isn't it, sir?
A. Well I think that's generally referred to as a pie chart, yes.
Q. All right. And it shows the -- a comparison of the total advertising, marketing and promotional expenditures for Brown & Williamson to their total domestic tobacco sales in the years 1958 to 1994; right?
A. Apparently that's what it says it does.
Q. Okay. At least that's what the chart says; right?
A. That's what the chart says.
Q. And do you have any information that's different from this chart?

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A. Well I haven't seen the chart before today, so I wouldn't be able to say.

Q. All right. Now sir, the advertising, marketing and promotional expenditures are shown in red; right?

A. Apparently.

Q. And --

That's what it says on the graph; right?

A. That's why I say apparently.

Q. All right. And the total domestic tobacco sales are shown in green; right?

A. That's right.

Q. Could you turn to the next page. That graph shows the -- a pie chart of the research and development expenditures compared to the total domestic tobacco sales for Brown & Williamson from nineteen nine -- '54 to 1994; right?

A. Apparently.

Q. All right. And according to this graph, the total amount that Brown & Williamson spent for research and development expenditures is shown in red; right?

A. Yes. But if you're trying to make some comparison between the two areas of spending, I think it's a specious comparison with respect because they're two very different animals.

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Q. All right. Well let's take a look --
A. You're comparing apples to oranges, I fear.
Q. Let's take a look at -- well sir, you don't -- never mind. Strike that.
Let's take a look at the next page.
A. Okay.
Q. That is the total of research and development expenditures, including contributions to CTR, compared with the total domestic tobacco sales for Brown & Williamson from 1954 to 1994; right?
A. Apparently, yes.
Q. All right. And according to this document, the research and development expenditures and contributions to CTR compose the red piece of the pie; right?
A. Again another -- another orange, or a pear even.
Q. Now sir, if we turn to the next page, that compares -- I'm sorry.
Go two pages down.
A. Uh-huh.
Q. Do you have a graph entitled "YOUTH PREVENTION EXPENDITURES TO TOTAL DOMESTIC TOBACCO SALES, 1954 to 1994?"
A. Yes, I do.
Q. All right. And according to this pie chart, the

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total prevention ex -- youth prevention expenditures is indicated by that line; right?

A. Apparently so.

Q. All right. And just so we're clear, you have not reviewed the interrogatory answers from which this data was taken; have you, sir?

A. No. I think I made that clear already.

Q. All right. All right, sir, one more subject I would like to discuss before we end, sir, and that is the procedures that have been put into place by Brown & Williamson to produce documents in litigation.

Are you generally familiar with those procedures, sir?

A. Well I think I have a broad understanding of that.

Q. All right. Now would you agree that Brown & Williamson has basically been in litigation since 1954?

A. I'm not all -- actually sure when it started, but one talks about 40 years of litigation, so I suppose that would be about right.

Q. All right. And are you aware that before the Minnesota litigation that we're taking your deposition in today, Brown & Williamson had in that 40 years of litigation produced approximately 1350

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total pages of documents?

A. 1350?

Q. Yes, sir.

A. I believe many of the cases didn't proceed to, you know, complete the discovery phase. Many of those cases that were started against the industry didn't include Brown & Williamson, frankly.

Q. Well sir, are you --

A. I'm sorry, just to complete my --

Q. I'm sorry, go ahead.

A. Just to completely answer, so I don't think that's of particular surprise. But there you go.

Q. Well were you aware of the fact that only a total of approximately 1350 pages were produced to plaintiffs' counsel in over 40 years of litigation?

A. I honestly couldn't say whether I was aware of that or not. But as I said, I think there were -- the number of cases in which Brown & Williamson were directly involved was fewer than many of the other members of the industry, and many of them didn't proceed to trial.

Q. Well are you aware that --

You know who Kendrick Wells is; don't you?

A. Oh, I know Kendrick, yeah.

Q. All right. And who is he?

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A. He is an attorney in our legal department.
Q. All right. And who is Ernie Pepples?
A. Ernie is currently the senior vice-president for government affairs.
Q. And he used to be the head of the legal department at Brown & Williamson; right?
A. He was once the general counsel. That's quite correct.
Q. Now are you aware of proposed -- I'm sorry. Strike that.

Are you aware that Kendrick Wells proposed procedures to try and keep various Brown & Williamson R&D documents out of the hands of plaintiffs' lawyers?

MR. McCORMICK: Object to the characterization.

A. I'm aware of a number of memorandum -- or memoranda, I suppose you should say properly, authored by Kendrick. I've been shown them in previous depositions.

But I suppose, for completeness, I should say that I wouldn't accept your characterization of them either.

(Discussion off the stenographic record.)

(Plaintiffs' Exhibit 4826 was marked

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for identification.)

(REPORTER'S NOTE: Exhibit 4826 was designated a Category II document and will not appear in this transcript.)

BY MS. WIVELL:

Q. Sir, showing you what's been marked --

MR. McCORMICK: Excuse me, excuse me, Ms. Wivell. I'm going to object to the use of this document.

MS. WIVELL: On what grounds, counsel?

MR. McCORMICK: On the grounds that it's a privileged document, that the claim of privilege is in fact right now being litigated before the Special Master, and that indeed this document is the subject of a pending decision of the Special Master.

MS. WIVELL: No. For the record, counsel, you're wrong. This document was already ruled on by the judge, and we have been given permission to use it, and I intend to do so.

This document was produced to us by Philip Morris, it bears the Bates number 2048322229. And the judge has specifically ruled on it.

MR. McCORMICK: Okay. Excuse me, counsel, but it -- I'm aware of this history, as are you. The judge has not ruled on it. The judge has ruled that

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his order containing or referring to this document should not be sealed. He has not ruled on the privilege issue. The privilege issue is in fact pending before the Special Master. And therefore I object to the use of the document in this deposition.

Now I -- I don't want to stop you from questioning Mr. Brookes about this deposition since I realize that it is, although a privileged document, one that is -- was stolen from Brown & Williamson and is therefore a public document. I -- I'm happy to go ahead with this, if you like, but in order to preserve our privilege claim, which is pending before the Special Master, we can only proceed if you'll go forward, as we would with Category II, with a sealed transcript and out of the presence of others, other parties.

MS. WIVELL: Oh, I'm willing to go forward on those grounds. I believe that --

I disagree with your characterization, but I'm willing to go forward so that we don't have to make another trip back here.

MR. McCORMICK: Fine. Sorry.

THE REPORTER: Let's go off the record, please.

(Category II portion begins and then this

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proceeding resumes.)

BY MS. WIVELL:

Q. Sir, just one final area.

Turning your attention back to Exhibit 602, do you have the total amount of youth expenditures for the period 1954 to 1995, that portion of the exhibit in front of you?

A. 1994, I believe, not 1995.

Q. Thank you. And --

A. Yes, I do.

Q. -- it shows a -- a total of $642,805 for youth --

A. That's right.

Q. -- for youth prevention expenditures?

A. That's -- that's what this schedule says.

Q. Now sir, if we assume that Brown & Williamson paid Sylvester Stallone half a million dollars to use its cigarettes in the movies, and it paid that other organization approximately a million dollars to use Brown & Williamson products in various movies, would you agree that Brown & Williamson spent more money trying to get its cigarettes into the movies than it did, according to Exhibit 602, in 50 years to prevent youth from smoking?

A. No, I wouldn't accept that characterization at

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all.

Q. All right.

A. I think the -- the sums that might have been spent in the '80s, I believe, in relation to product placement, was something that was being done by a number of consumer goods companies at that time, and as I said earlier, I think if the script called for a cigarette to be smoked in a particular scene, I don't think it was inappropriate in that era for a manufacturer of cigarettes to find some way to make sure it was his pack of cigarettes as opposed to a competitor's pack.

More recently as I said, in '95 and '96 and again in '97, quite significant dollars had been expended under a TI program called the We Card program that's very successfully been introduced to, I think, 385,000 retailers all throughout the nation. That was a very significant effort and I'm very proud to have been part of it.

Q. But at least according to the figures that are listed here for the period 1954 to 1994, there was less than $700,000 that was expended in that period for youth prevention expenditures; right, sir?

A. I think we've already had testimony to that effect, yes.

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MS. WIVELL: Thank you, I have nothing further.

THE WITNESS: Thank you.

THE REPORTER: Off the record, please.

(Discussion off the record.)

DIRECT EXAMINATION

BY MR. McCORMICK:

Q. Mr. Brookes, in her examination --

THE TECHNICIAN: One second, please. Can you check your mike for me again?

THE REPORTER: There you go.

MR. McCORMICK: Ready?

Q. Mr. Brookes, in her examination yesterday and again this morning, Ms. Wivell showed you a number of documents and asked you to read portions of them into the record, and I'd like to begin by referring back to a number of those and asking you some additional questions about them.

First, my first series of questions concerns an Exhibit No. PX 179, which is a -- for the record, is a document from April of 1954 called "SMOKE CONSTITUENTS AND THEIR RELATION TO QUALITY."

Now Mr. Brookes, do you recall being asked some questions about this document?

A. Yes, I do.

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Q. And in particular, if you would refer to page 23, the page numbered 23 at the bottom, Ms. Wivell asked you to read portions of page 23 that indicated that in 1954 this document reflected an awareness of the fact that certain constituents are found in cigarette smoke. Do you recall that testimony?

A. Yes, I do.

MS. WIVELL: Objection.

Q. Similarly, if you'd look at page 26 of the document, --

A. Uh-huh.

Q. -- the record will reflect that Ms. Wivell asked you to read specifically the first full paragraph. And does that paragraph, Mr. Brookes, also refer to the existence of constituents of cigarette smoke?

A. It refers to carbon monoxide, if I'm looking at the right paragraph.

Q. Right.

Now Ms. Wivell asked you if these documents reflected or demonstrated that Brown & Williamson knew in 1994 whether these components were part of cigarette smoke, and my question to you is: Looking at those two pages that Ms. Wivell referred to you, does the document indicate whether Brown & Williamson's knowledge was something that was

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contained just within Brown & Williamson or whether it was public information?

MS. WIVELL: Objection.

MR. GOTTLIEB: Objection.

A. Counselor, I think you mentioned 1994 in that question.

Q. I meant to say 1954.

A. 1954, the date of this document?

Well yes, actually I was very intrigued when I was being asked to look at this document first about the number of references that actually appeared in the text. Obviously to -- it appeared to me, at least, to be references to studies that had been published by scientists outside the group. And then when I subsequently turned to the bibliography at the end of the book, I see there's really quite an enormous host of external articles, published articles on these issues which presumably, in view of the date of the -- the document itself, predated 1954 and were in the public domain.

Q. All right. And let me ask you specifically about a few of those. If you'd turn to the --

First of all, you're referring to the pages that end with Bates numbers 445 through 447; is that correct?

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MS. WIVELL: Objection.

A. Yes, those are the --

I think there are three pages, 445, 446 and 447, which are part of the very comprehensive bibliography.

Q. All right. And I'd like to ask you about a selection of these, if I could.

A. Uh-huh.

Q. Would you look, Mr. Brookes, at the reference number 19.

A. Number 19.

Q. And you were asked a number of questions by Ms. Wivell about Brown & Williamson's knowledge about the gaseous phase of -- of -- of cigarette smoke, and I'd ask you if -- if number 19, which for the record refers to a report by Fishel, F-i-s-h-e-l, in the Industrial Engineering Chemistry Journal titled -- or referred to as "Composition of cigaret smoke - the gaseous phase," if you could state for the record, Mr. Brookes, what year that article was published.

A. That published -- that --

That article appears to have been published in 1949, five years before this document.

Q. And if you look --

Would look at exhibit -- or item number 24, an

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article published in the American Journal of Public Health in 1934. Would you read for the record what the document indicates that article was about.

A. That article apparently was describing the fact that there may be microscopic amounts of arsenic in tobacco smoke.

Q. All right. Would you look at -- at item number 29.

A. Uh-huh.

Q. Do you have that in front of you?

A. Yes, I do.

Q. And this is an article, according to the report, which Ms. Wivell showed you by Larson and others, a published article in 1945, and could you read for the record what the subject was of this article by Larson.

A. The topic apparently was "Relative toxicity of nicotine and nornicotine."

Q. All right.

A. If that's how you pronounce that. "Nornicotine."

Q. There are quite a number of others and the document will speak for itself, but let me just mention one other in particular that ties in to something that Ms. Wivell asked you at length. Would

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you look at item 30, --

A. Yes.

Q. -- which is an article by Larson and others published in 1946, and could you read what this document says the subject of the -- of that 1946 public study was.

MS. WIVELL: Objection to form.

A. Well this was a study that appears to have been published in the Pharmacological Experimental and Therapeutics Journal, and it was -- the topic was the "Studies on the fate of nicotine in the body."

Q. Now Mr. Brookes, would you look next at Exhibit No. 315, which for the record is a report of a research conference held at Southampton in 1962. And do you recall that you were asked some questions by Ms. Wivell about this?

A. I do recall that, yes.

Q. Now specifically, Mr. Brookes, I'd like to ask you about the questions Ms. Wivell -- follow up on the questions Ms. Wivell asked you about statements made by Sir Charles Ellis.

Do you recall that you were shown a somewhat earlier -- slightly earlier document that referred actually to the upcoming Southampton conference in which Sir Charles Ellis referred at different times

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in the documents to -- talking about smoking behavior and the reasons people smoke -- to the term "habit" and the term "addiction?"

MS. WIVELL: Objection to form.

A. Yes, I remember that earlier document that you referred to. And indeed, it appeared to me in reading the document that Sir Charles Ellis did use the words "habit" and "addiction" interchangeably.

Q. All right. And I'd like to add to the portions of this, this -- of this Exhibit 315, the Southampton conference report that Ms. Wivell asked you to refer to or to read into the record, I'd like you to add, if you would, one additional sentence which I don't think was read into the record, and that's at the page that's marked Bates number 791.

A. Yes.

Q. And in the first full paragraph there, would you read for the record and for the members of the jury what term Sir Charles Ellis used in this Southampton report to describe his -- this issue that he was investigating as to why people smoke and smoking behavior.

MS. WIVELL: Objection to form.

A. Well it's very interesting because he uses the term "habit of addiction" from this -- in this

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document, and to my knowledge that reflects the usage of the language that had been -- well sorry, a phrase that was used in a -- in a report that's just been published in 1962 by a very authoritative body, the Royal College of Physicians in the U.K., and in that study on smoking they had used, in referring to the habit -- referring to the smoking experience, they had used this term "habit of addiction." And I think, just so I -- I can clearly state, that it may not be something which the ladies and gentlemen of the jury would be familiar with, the Royal College of Physicians report in 1962, but it was a very significant milestone in the smoking-and-health debate and had a very significant impact on the public in the United Kingdom at the time, somewhat equivalent to the impact, I would imagine, that the 1964 Surgeon General's report had on the American public.

Q. All right. If I could just ask you a couple of follow-up questions about that.

First of all, could you read the specific language, the -- the entire sentence that Sir Charles used --

A. Yes, I'm sorry.

Q. -- in this document.

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A. You did ask me to do that and I didn't. You're quite right.

He says, "Lastly, smoking is a habit of addiction that is pleasurable; many people, therefore, find themselves sub-consciously prepared to believe that it must be wrong."

Q. All right. Now the --

You've referred to that language, I believe, as having derived from the language that had been made public by the Royal College of Physicians that year.

If you would look on the page of this Southampton research report with Bates number ending 790, --

A. Uh-huh.

Q. -- could you please read for the members of the jury and for the first record -- and for the record the very first sentence under that -- on that page under the "Sir Charles Ellis" heading.

MS. WIVELL: Objection to form.

A. Certainly. The sentence reads, "After reading the Report of the Royal College of Physicians and the debate in the House of Lords the dominant -- dominant impression I received was that if people -- was that of people who had reached an emotional conclusion in which they believed passionately and sincerely."

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Q. All right. Now Mr. Brookes, could you next look at the document which was marked as Plaintiffs' Exhibit 611. Do you have that in front of you?

A. Yes, I do.

Q. And do you recall that this is the series of hypotheses which, as you pointed out to Ms. Wivell, were being explored by British-American Tobacco Company, or BATCo, which, as the cover states, contains, quote, a number of possibly dubious assumptions, end of quote?

A. Yes, I --

MS. WIVELL: Objection.

Q. Now --

A. Yes, I remember this document.

Q. -- as with the first document that I've asked you about, that is, Exhibit 179, the -- well let me --

Let me start that over and ask you this: As the second page of this indicates, is this document addressing the issue, generally speaking, of smoker motivation and dependency?

MS. WIVELL: Objection.

A. It appears to be so, yes.

Q. Yes. And like the first document that I asked you about this afternoon, does this document also

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purport to rely on a whole series of outside formally and publicly published studies on this subject?

MS. WIVELL: Objection.

A. Yes. Again, a very comprehensive bibliography is attached, running to some three pages.

Q. All right. Now I just want to ask you about one of those at this point. If you'd look at page 17, numbered at the top, --

A. Yes.

Q. -- one of the articles that I believe you pointed out to Ms. Wivell in response to one of her questions, which is item two there, one of the authors of that document is someone identified as M. A. H. Russell. Could you explain for the members of the jury and for the record who M. A. H. Russell is?

MS. WIVELL: Objection.

A. Dr. Russell, I believe, was probably one of the leading proponents in the public health community in the U.K., certainly in the '60s and '70s, who had a very high profile in matters and high reputation, indeed, in matters of smoking and health, both within the external scientific community and -- and, I believe, with the U.K. government, and it was he and his -- and Gio Gori, of course, on this side of the Atlantic, who I think was then the director of the

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Tobacco Working Group, which was part of the National Institute of Cancer, both were recommending to manufacturers and -- well first to consumers, I imagine, that they would do well to smoke a low tar and nicotine cigarette, and -- and to manufacturers, to -- to seek to find ways in which they can develop cigarettes which have an average delivery of nicotine to -- and an ultra low delivery of tar.

Q. Now let me just follow up on that. First of all, was Dr. Michael A. H. Russell a -- a proponent of the tobacco industry? Was he a pro-tobacco voice in the U.K. Kingdom --

MS. WIVELL: Objection.

Q. -- or United Kingdom community?

MS. WIVELL: Objection.

A. No. He was a very strong proponent of the anti-smoking position. He was a strong proponent of the fact that one should not smoke, and that smoking was a cause of cancer and a number of other diseases.

Q. All right. Now you were shown a document, and perhaps -- I think perhaps more than one, by Ms. Wivell in which I believe that the documents you were shown referred to BATCo, but in any event, documents in which either BATCo and Brown & Williamson or both had undertaken a project to try to -- or series of

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projects to try to develop a cigarette that had a higher nicotine-to-tar ratio than traditionally had been the case; that is, that had an increased amount of nicotine relative to its amount of tar. Do you recall that -- those questions?

A. Yes, I --

MS. WIVELL: Objection.

A. -- do.

Q. Now would you explain for the members of the jury and for the record here, Mr. Brookes, where that idea came from to try to develop a higher-nicotine-relative-to-tar cigarette?

A. Well as I say, I think that line of direction was being strongly proposed by both Dr. Gio Gori here in the U.S. and by Michael Russell, Dr. Michael Russell in -- in the U.K., and it was a direction that was something that we within Brown & Williamson, and I imagine within the other tobacco companies, wished to respond.

Q. Would you look next, please, Mr. Brookes, at the document that was marked for identification as Plaintiffs' Exhibit 755. You have that in front of you?

A. I have a document in front of me. I don't see "755" on it, but it is a very bad --

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Q. Let me see which one --
A. -- a very bad copy.
Q. That's right, yeah.
And I'd ask, this is a document -- document that Ms. Wivell asked you about, and she asked you to read in particular one statement from this document into the record which is at -- on the page that is Bates numbered with the numbers ending 101.
A. Yes, I have that page.
Q. And the statement she asked you to read into the record, perhaps unintentionally with the suggestion that this may have been a statement by a Brown & Williamson or a BATCo person, states, quote, "It has been said, 'If it were not for nicotine in tobacco smoke, people would be little more inclined to smoke cigarettes than they are to blow bubbles or light sparklers,'" end of quote. Do you see that?
MS. WIVELL: Objection.
A. Yes. Yes, I see that.
Q. All right. Just so the record is clear, does that --
Does this document suggest that that was a statement by a Brown & Williamson or a BATCo employee?
A. No, it -- it references the fact that that is

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almost certainly a statement of Dr. Michael Russell in 1971, the Michael Russell we've just been referring to.

Q. Would you look next, Mr. Brookes, at the document that was marked for identification as Plaintiffs' Exhibit 962.

A. Yes, I have that.

Q. This again is a document produced by Brown & Williamson Tobacco and it is titled -- title begins the "TPM AQUEOUS EXTRACT" et cetera. Do you --

Is that the document that you have in front of you?

A. Yes, I see that.

Q. Once again you were asked to read, I believe into the record, a statement at the Bates numbered -- the page that's Bate numbered -- Bates numbered ending 668. Could you turn to that?

A. Yes, I have that.

Q. And the statement that you were asked by Ms. Wivell to read --

This document contains -- concerns, among other things, the issue of pH and free nicotine; is that correct, --

MS. WIVELL: Objection.

Q. -- Mr. Brookes?

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A. That's my understanding of what the document is -- was about, yes.
Q. So that the record is clear, Ms. Wivell asked you to read into the record the sentence from the second paragraph that reads, quote, "Schmuk," that's S-c-h-m-u-k, "attempted to relate, quote, free nicotine, close quote, to smoke quality, period. The term, quote, free nicotine, close quote, was defined by Schmuk as the form(s) of nicotine which at the natural pH of smoke solutions can be isolated by steam distillation or by using water immiscible organic solvents," close quote. Do you see that?
A. Yes, sir.
MS. WIVELL: Object. I didn't ask him to read that into the record, counsel. I really, really think that's completely inappropriate.
MR. McCORMICK: I think the whole paragraph was read, counsel.
Q. But in any event, so that there's no misunderstanding, Mr. Brookes, is the person referred to here as Schmuk, is that an employee of Brown & Williamson, or does this reflect any kind of secret knowledge or research known to Brown & Williamson?
MS. WIVELL: Objection.
A. No. I think Professor Schmuk, I think, was an

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R -- was a Soviet scientist and may still be alive till -- for all I know, but certainly was a leading Soviet scientist who was as early as 1935, I believe, studying the question of pH and free nicotine in relation to cigarette smoke. And he is a leading authority on -- on those matters as far as I'm aware.

Q. All right. Would you look next, Mr. Brookes, at Plaintiffs' Exhibit 617.

A. 617. Uh-huh.

Q. Ms. Wivell showed --

This document, for the record, is -- begins with page three, and it's an R&D document up in the upper left-hand corner that says "Page 3," and it is a document that appears to be an executive summary on the subject of ammonia technology. Do you see those references at the top of the first page?

A. Yes, I do.

Q. And again, in addition to the portions which Ms. Wivell referred you to, I'd ask you to just, if you would, add three sentences to the record, which I would then like to ask you some questions about.

First, could you read the quote that appears on the very first page of the document, right under the title "AMMONIA TECHNOLOGY."

MS. WIVELL: Objection to form.

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A. Yes, I will. It reads, quotes, "Ammonia technology enhances processes that occur naturally," and the word "naturally" is underlined, "during tobacco and cigarette aging and during combustion," close quotes.

Q. Could you also read -- add to the record the first two sentences, Mr. Brookes, of the third paragraph that begins "Ammonia technology...?"

A. Yes, I could. It reads, "Ammonia technology, brackets, AT, brackets, expands the latitude of the leaf blender. Consistent taste quality can be maintained with a broader range of leaf. It also allows an increase in the flue/burley ratios of blends which can partially alleviate burley shortages."

Q. And would you finally read into the record, if you'd look at the page Bates numbered 913, --

A. Yes.

Q. -- would you read into the record the second-last paragraph, please, to -- just -- I believe it's two sentences.

A. The one that commences "Dr. Lauterbach...?"

Q. Yes, exactly.

A. Very good.

"Dr. Lauterbach presented an overview of ADVERB

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analytical findings. The important point is that the key analytical findings required sophisticated methods to provide understanding. The most important understanding realized is that Marlboro has a Virginia skewed blend. It gives burley skewed smoke taste because of the AT tools used in its manufacture."

Q. Now Mr. Brookes, I'd ask you if you could explain for the members of the jury that last sentence you read where it says "...Marlboro has a Virginia skewed blend. It gives burley skewed smoke taste because of the AT ammonia technology tools." Can you explain what that means?

A. I'll do my best.

Virginia tobacco and burley tobacco are two very different varieties of tobacco, both of which are grown here in America. The Virginia tobacco taste is lighter and smoother, and the burley taste has a more robust flavor to it. And what I understood from this paragraph was that we had discovered, very much in line with the testimony I was giving earlier, that Marlboro had achieved a burley skewed taste, a more robust, flavorful taste for Marlboro, without using as much burley as they needed to because they had used the ammonia technology in the process to achieve

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this enhanced taste.

Q. Now Mr. Brookes, you were shown a number of documents, some of which dated all the way back, I believe, to the early 1970s, talking about different ideas about how ammonia technology might be being used by Philip Morris and how it might be used by Brown & Williamson or others -- or others. What is the date of this document --

MS. WIVELL: Object.

Q. -- as reflected on the front?

MS. WIVELL: Objection to form.

A. Well it appears to be the introduction to an ammonia technology conference in Louisville between the dates June 11th and 13th, 1990.

Q. And was 1990 after Brown & Williamson had accumulated a number of years of actual commercial experience with ammoniation?

A. Yes. I believe that we started using ammonia technology for Brown & Williamson brands in about the mid-1980s.

Q. And does this report, and the short portions in particular that I've asked you to read, accurately sum up the situation with respect to Brown & Williamson's purpose in using ammonia technology as it was in fact commercialized in Brown & Williamson's

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brands?

MS. WIVELL: Objection.

A. Yes, I really thought this document fully supported the position I'd previously taken in testimony, and I was pleased to see that it did.

Q. Would you look at the document --

Do you have in front of you there the document that has been marked for identification as Plaintiffs' Exhibit 1499?

A. 1499. Yes, I see it. Yeah.

Q. All right. This document was shown to you by Ms. Wivell. It is titled for the record a survey -- "1969, SURVEY OF CIGARETTE SMOKING BEHAVIOR AND ATTITUDES." Do you see that on the very first page of the document?

A. Yes, I do.

Q. And so that the record is clear, Mr. Brookes, was this a document which, as far as you can tell from looking at it, was either prepared by anybody associated with Brown & Williamson or for anybody -- or on behalf of Brown & Williamson?

MS. WIVELL: Objection.

A. No. In looking at this document, I couldn't see any reference whatsoever to the fact that this had been in any way requested by Brown & Williamson. It

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appears to have been published by an organization called Eastman Chemical Products, Inc., and I see nothing in here that would suggest that it was called for or requested by Brown & Williamson.

Q. All right. Is there anything to suggest that this -- in this document, Mr. Brookes, to suggest that this was not a document that some company not associated with you had prepared and distributed probably to many different companies?

MS. WIVELL: Objection.

A. That seems to me to be a perfectly acceptable interpretation of the evidence of this document.

Q. Ms. Wivell also showed you a document marked Plaintiffs' Exhibit 4824. Do you have that?

A. Yes, I do.

Q. And again, so that there's no misunderstanding here, this is a document which is titled "1969, Survey of Cigarette Smoking Behavior and Attitudes;" correct?

A. Yes.

Q. This is a document that Ms. Wivell also, as she did with the previous one, pointed out contained references to the smoking habits of people under 18.

Is this a document -- a survey that was conducted by Brown & Williamson?

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MS. WIVELL: Objection.

A. No. Again, it was authored by the same company, I believe. Or perhaps it was a different company. Let me just double check. It was -- it seems to be a company that was in the same group of companies at least -- no, I -- I --

This is the same company, I apologize, Eastman Chemical Products, Inc.

Q. And does it suggest anywhere in the document, Mr. Brookes, this was prepared -- and I realize we're going back nearly 30 years ago now -- but does the document suggest anyplace that this was prepared for the Brown & Williamson Company?

A. I certainly haven't seen any references in this document that would suggest that, no.

Q. All right. And lastly on this issue, could you look at Plaintiffs' Exhibit 3821.

A. Could you show me what I'm looking for?

Q. Yes. It's this document, it's dated February 21, 1973.

A. Is this it?

Q. By Pittman --

To Mr. Pittman --

A. Yes, I --

Q. -- from R. L. Johnson.

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MR. McLAUGHLIN: Yeah.

THE WITNESS: I think we have it.

MR. McLAUGHLIN: We have it.

MR. McCORMICK: All right.

Q. Now again, Ms. -- Ms. Wivell showed you this document particularly in connection with a line of questions, Mr. Brookes, relating to a letter from Mr. McCarty to Mr. Califano which I want to come to in a minute.

A. Yes.

Q. But again, so that the record is clear, does this suggest --

This document refers to two studies, Wave XIII and Black Study. Do you see that?

A. Yes, I see that.

Q. And first of all, does this document say whether or not those two studies are -- were done by or on behalf of Brown & Williamson?

A. No, it doesn't. And I think I testified as well that I have no knowledge of either of those studies.

Q. All right. Now next would you look at the McCarty to Califano letter, --

A. Yes.

Q. -- PX 1498, in which Mr. McCarty is responding apparently to a request from Mr. Califano for some

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information. Is that correct?

MS. WIVELL: Objection.

A. That's certainly the interpretation I took from the letter, yes.

Q. And specifically, Mr. Brookes, Mr. McCarty in this letter requests that they be supplied by Mr. Califano with something called the National Institute of Education Survey. Do you see that?

A. Yes, I do.

Q. Now none of the documents that Ms. Wivell showed you constitute the National Institute of Education Survey; do they?

A. No, they don't.

Q. To the extent that her questions suggested that Brown & Williamson had such a document and was keeping it from Mr. Califano or didn't want Mr. Califano to -- to know that Brown & Williamson had the document, is there anything in any of the documents Ms. Wivell showed you that -- that supports that allegation?

MS. WIVELL: Objection.

A. No, I haven't seen anything to say that we had this particular document that Johnny McCarty was referring to, and I think the suggestion that Ms. -- Ms. Wivell was trying to make, anyway, was -- it

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didn't -- didn't bear a close examination I felt.

Q. All right. Would you look at the document that was marked for identification as Plaintiffs' Exhibit 1279, which is titled "BROWN & WILLIAMSON TOBACCO COMPANY, NEW VENTURE -- NEW VENTURES PRODUCT -- PROJECT." Do you see that?

A. Yes. I have that in front of me.

Q. Now in an entire line of questions concerning this document --

Well let me strike that and ask you if you could, please, turn -- if you could please turn to the Bates numbered page -- the page Bates numbered 760.

A. Yes, I have that.

Q. Now in a --

I'm just going to give one example here, Mr. Brookes, but in an entire line of questioning about this document, Ms. Wivell asked you if this document contained information, as an example, about people starting to smoke when they were 14. Do you recall that line of questioning?

MS. WIVELL: Objection.

A. Yes. Yes, I do.

Q. And at page 760 there is a reference to a quote from somebody who -- which says, quote, "I started

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when I was about 14," close quote. Do you see that?
A. Yes, I see that.
Q. Now does this document, Mr. Brookes, anywhere suggest that that information came from a person who was 14?
A. No. Indeed, rather the reverse, it seems to be reflections -- recollections of what individuals had -- could recall about what they did, you know, when they first perhaps started to smoke. It was -- it was very much those sorts of folks.
Q. Would you look next at the document that's been marked for identification as Plaintiffs' Exhibit 623.
A. Yes, I have that.
Q. Now this document is titled, as Ms. Wivell's interrogation established, on the cover page, "STATEMENT of BUSINESS CONDUCT." Do you see that reference on the first page?
A. Yes, I see that.
Q. If you turn to the index of the document, does the document contain something in addition to the statement of business conduct?
A. Yes, it does. It includes a separate section altogether that refers to guidance notes for the implementation of the statement of business conduct.
Q. And if you'd look at the page that's Bates stamp

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numbered 978 --

A. I think I have that, yes.

Q. And Ms. Wivell asked you, I believe, to read specifically portions of section C.(i). And first of all, so the record is clear, which part of this report is section C.(i) on this page 978? Is it in the statement of business conduct or the guidance notes?

MS. WIVELL: Objection.

A. No, this is part of the guidance notes.

Q. All right. Now let me ask you to comment, if you would -- or I would like to ask you some follow-up questions on one of the -- the first sentence from that paragraph C.(i) on page 978.

First of all, so we're all -- we all get our bearings here, could you read it into the record, please.

A. Certainly. It's under the heading "Smoking and Health Policy," and it says, "It is important that statements made concerning cigarette smoking and health related issues be factually and scientifically accurate."

Q. And do you agree with that, Mr. Brookes?

A. Very much. That's my position. I believe that's the position of Brown & Williamson.

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Q. Why is it important that statements made, as this document puts it, concerning cigarette smoking and health related issues be factually and scientifically accurate?

A. Well I think we have a responsibility as a manufacturer of cigarettes here in the U.S. market to talk factually and scientifically -- well to talk -- to make sure that whatever we say is accurate both in terms of its fact base and its scientific base. So I fully endorse this particular approach that's recommended, if you like, in the guidance notes to the conduct -- the business conduct policy. It's certainly totally consistent with my position, and if I may say so, it's consistent with the -- the views expressed to me over the years by different individuals I've met in different companies within the B.A.T Group of companies.

If I'd have to characterize individuals within the B.A.T Group of companies on these matters, very great public importance and considerable public attention is addressed to many of them, my -- my characterization would be that these individuals always seek to do the right thing, often in very difficult circumstances, and I hope it's not too gratuitous to say that's why I felt comfortable

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staying as an employee of various companies within the B.A.T Group of companies over the last 20 years.

Q. Now Mr. Brookes, the next document I'd like you to look at has been marked for identification as Plaintiffs' Exhibit 1490. Do you have that in front of you?

A. Ah, yes, I do.

Q. And in Ms. Wivell's questioning, she referred you to a statement on the page that's Bates numbered 082. If you could turn to that, please.

A. Yes, I have that.

Q. And I guess one preliminary question which -- do you know --

The author of this document, as reflected at -- on the last page, is P. L. Short, and which company was Mr. P. L. Short associated with?

A. Well I believe I testified earlier that I think he was a marketing executive of BATCo.

Q. Okay. BATCo in the United Kingdom.

A. Correct.

Q. Now referring to the page Bates numbered 082, Ms. Wivell had you read into the record the last sentence of that first paragraph that reads, "Furthermore, advertising for low delivery or traditional brands should be constructed in ways so

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as not to provoke anxiety about health, but to alleviate it, and enable the smoker to feel reassured about the habit and confident in maintaining it over time." Do you see that?

A. Yes, I see those words.

Q. Now this was a -- a statement made by Mr. Short.

Let me ask you, first of all, with respect to Brown & Williamson now, not BATCo, the author of this document -- with respect to Brown & Williamson, is there -- does Brown & Williamson make any health claims in the United States concerning its products?

MS. WIVELL: Objection.

A. Not only do we not make health claims, were we to even attempt to do so we'd be jumped on pretty heavily by the FTC, who would seek to prevent us doing so. So no, we don't make health claims. It's no part of our policy to do so.

Q. Mr. Brookes, you've been asked some questions in this deposition about your position on -- on why people smoke, and particularly on the -- on the issues of what is sometimes referred to as "habit" or sometimes referred to as "addiction."

My question to you is: Has the position of Brown & Williamson, since you've been the chairman of

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Brown & Williamson, been dictated -- on -- on the subject of why people smoke and the subjects of habit and addiction, has that position been dictated by the facts that there are lawsuits pending against the company which make allegations on that -- on that subject?

MS. WIVELL: Objection.

A. Well I think I testified earlier that I'm certainly aware that those allegations are -- do exist in lawsuits against Brown & Williamson. But no, I think my position and the company's position on this question of whether smoking is a habit or an addiction, what the appropriate term to use in relation to smoking is, is by and large based on common expense and -- and the experience of literally tens of millions of Americans who quit smoking without any great difficulty. I don't discount the fact that quitting smoking can be tough; it's a pleasurable activity and it -- it's a habit that can be tough to break. But nevertheless I think with a little determination and effort, millions of Americans have proved that it is possible. So I don't -- I don't think the label "addiction" is -- is appropriate in relation to cigarette smoking.

Indeed, I think actually it's somewhat unhelpful

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because if folk believe that the Surgeon General tells them that they're addicted to cigarette smoking, and as the Surgeon General does indeed declare, I think it's a great way to undermine motivation in terms of folk who actually may have a determination to -- to quit. So by and large I think it's an inappropriate reference in -- in relation to cigarette smoking. I think "addiction" is better reserved for drugs such as cocaine, morphine, heroin, et cetera, which obviously produces severe psycological and physiological withdrawal symptoms if the folk are addicted, as they are, to those substances.

Q. All right. Now Mr. Brookes, I asked you about Brown & Williamson during the period of time that you have been the chairman. Let me expand my question.

To your knowledge, and based on the investigation that you've done, has -- at any time, has Brown & Williamson's position on the, quote, addiction, close quote, issue, or any of the other B.A.T Industries affiliated companies that you've worked for, have any of those companies ever let their position on why people smoke and on the subjects of addiction and habituation be dictated by the fact that there were lawsuits pending against

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them?

A. No.

MS. WIVELL: Objection.

A. No, I don't think so. I think they were based on common sense.

Q. The last document I'd like to offer you -- or I'd like to ask you about is -- I believe --

MR. McCORMICK: Am I correct, counsel, that this is Exhibit 602?

MS. WIVELL: Yes, sir.

Q. All right. The last document I'd like to ask you about is a document that's been marked for identification as Plaintiffs' Exhibit 602, which has been identified by counsel as a report prepared by an accountant or consultant hired by plaintiffs' counsel in this case which contains or purports to contain summaries of information about various types of expenditures for advertising, for -- for research, for youth smoking prevention, et cetera. Do you recall that document?

A. Yes, I recall it.

MS. WIVELL: Objection to counsel's speech.

Q. Now do you have, Mr. Brookes, any independent knowledge --

You were asked extensively to verify that

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statements made in this report are in fact made in this report. Do you have, as you sit here, any independent knowledge about the accuracy of any of the numbers in this report?

A. No, I don't see how I can. It was a document, according to -- to plaintiffs' counsel, that had been prepared on their behalf.

Q. There are doc --

There are numbers in here, and I think at one point you quoted one specifically, that purport to be very precise, such as $439,682, in fact I think that may be the example that you used, as a very precise and purportedly accurate number.

Do you have any independent knowledge whether that or the other numbers in here were -- are or are not accurate?

A. I have no independent knowledge whatsoever, although a number calculated to such a level of accuracy I would have thought does warrant a certain degree of suspicion.

MR. McCORMICK: That's all the questions I have.

THE REPORTER: Off the record, please.

(Discussion off the record.)

RECROSS-EXAMINATION

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BY MS. WIVELL:

Q. Sir, I'd like to just address a couple of points that you talked about with counsel.

First of all, would you turn your attention to Exhibit 315.

A. Yes, I have it.

Q. Page 790, counsel asked you to read a portion of Sir Charles Ellis's presentation; didn't he?

A. I'm just looking for the page. Did you say 790?

Q. Yes.

A. Let me just quickly get that.

Yes, that's right. He did.

Q. And you recall that he asked you some testimony about the report of the Royal Conference of Physicians?

MR. McCORMICK: Royal College.

A. Royal College. Royal College of Physicians, that's right, yes.

Q. Let me rephrase the question.

Do you recall that counsel asked you some questions concerning the report of the Royal College of Physicians?

A. That's correct.

Q. Now one thing he didn't ask you to read was the statement a little further down in the paragraph that

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says, "Yet we who have been immersed in the subject for many years know that this report produced no new fact, produced to new arguments, indeed, except for the contribution of an emotional gloss, left the subject untouched;" right?

A.   Indeed, that's what he said.

Q.   All right. And as a matter of fact, that is what Sir Charles Ellis said concerning the report of the Royal College of Physicians; right?

A.   And I would take from that that he felt that the Royal College of Physicians report, albeit raising the level of awareness generally within the U.K. on this subject, didn't actually add any new scientific facts.

Q.   Anything new that those who had been involved for many years on this subject didn't already know; right?

A.   I think that's what he was saying, and --

Yes, to your point. And there are many learned reports in the public domain, of course; I guess he was referring to there.

Q.   Well sir, you haven't chatted with Sir Charles Ellis about this document; have you?

A.   I think that might be rather difficult.

Q.   He's passed away; hasn't he?

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A. I would assume so. I think he was quite a senior gentleman back in the '60s, so unless he has some very good longevity, I think he must have passed away.

Q. So we really don't know what he meant other than what he said right here in this document; right?

A. Well I -- indeed, but I think it's perfectly open to that interpretation.

Q. All right. Would you turn to Exhibit 1498, Mr. McCarty's letter to Mr. Califano?

A. Yes.

Q. Now just so we're clear here, Mr. McCarty says in the first paragraph, "Because our policy against advertising or in any way promoting the sale of cigarettes to persons under 21, Brown & Williamson does not have at hand the research data and other information necessary to a responsible analysis of the suggestion made in your letter of April 26th;" right?

A. That's right.

Q. Now he goes on to say that he is asking for the National Institute of Educational -- Education Survey; isn't that true?

A. Yes. I think that's what I testified to, yes.

Q. All right. Just so we're clear here, any

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implication that Mr. Califano had asked Mr. McCarty for the National Institute of Educational Survey data would be incorrect; right?

A. Yes. I didn't take that interpretation from anything that's been said, but if that was the interpretation, then that would be wrong.

Q. All right. And just so we're clear here, you would agree that at the time Mr. McCarty wrote this letter in May of 1979, Brown & Williamson had in its files information concerning the sale of cigarettes to persons under the age of 21; right?

A. Yes. But I don't think you can then go on to say that necessarily we had in our files information that was necessary to a responsible analysis of the suggestion that Mr. Califano had made, which was the point I was trying to -- to draw out in my response, I think both to you and to my counsel.

Q. Have you seen Mr. Califano's letter that elicited this response from Mr. McCarty?

A. No, I haven't. And that would certainly, I guess, help our understanding of what Mr. McCarty was saying if we have it.

Q. All right. Would you turn to the statement of business conduct, Plaintiffs' Exhibit 623.

A. Yes.

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Q. All right. Would you please turn to the page that ends with Bates number 965.
A. Yes, I have that.
Q. All right. It -- it says in the introduction, "This Statement of Business Conduct applies to all directors, officers and employees of B.A.T Industries p.l.c. and its principles apply to all directors, officers and employees of every company within the B.A.T Industries Group of companies." Right?
A. That's what it says.
Q. And Brown & Williamson is one of the companies within the B.A.T Industries group of companies; right?
A. I would certainly say so, yes.
Q. All right. And if we go down to the "Purposes" section of this document, on the same page, it says, "The intention behind this Statement is to provide guidance as to the principles and business behaviour which all staff are expected to observe;" correct?
A. That's what it says.
Q. All right. And you would agree that Brown & Williamson employees were expected to follow the principles that were set forth in this document; right?
A. Yes.

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MR. McLAUGHLIN: Object to form.

A. If I may say so, I -- I imagine that --

Well, I haven't studied the whole document in detail, but clearly I think B.A.T Industries was intending to enunciate a standard of ethical business practice which it would expect the operating companies within the group to observe.

Q. And that --

A. Which I think is entirely appropriate and honorable, indeed, for a holding company to -- to do.

Q. And additionally it set forth a smoking and health policy which it also expected its subsidiaries and associated companies to observe; right, sir?

MR. McLAUGHLIN: Object to the form. Misstates the document and his prior testimony.

A. Yeah. I think so far as we've just been debating this, haven't we, that this smoking and health policy comes under a separate heading which refers to guidance notes.

Q. Now sir, would you please turn to Exhibit 602. And I have a page open for you.

A. Oh, thank you.

Q. That page bears the signature of Paul J. Much, senior managing director; right?

A. Yes, it appears to.

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Q. Read the paragraph above the signature to yourself, please.
A. Thank you.
Yes, I see that.
Q. All right. Now you've read it, sir; haven't you?
A. Yes, I have.
Q. And it -- this document -- or I'm sorry.
This paragraph tells us what Mr. Much based his figures on; doesn't it, sir?
A. Let's see. Well it talks about a listing of documents relied upon by Mr. Much which are attached and I haven't studied, so --
The previous paragraph talks about testimony is based on his academic training and experience and his ongoing review of publicly available corporate financial data and tobacco and internal tobacco industry documents and discovery. He seems to rely on quite a lot.
Q. All right. Sir, would you agree that if he relied on Brown & Williamson's discovery responses to put together this document, that he should have a right to be able -- I'm sorry. Strike that.
Sir, if Mr. Much put this document together based on, in part, Brown & Williamson's discovery

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responses, he had had a right to believe that those responses were accurate; right?

A. Well I hope we would submit accurate responses to interrogatories and requests for discovery, and I would assume that your expert witness would be entitled to assume that, yes.

MS. WIVELL: All right. I have nothing further.

MR. McCORMICK: All right. I think we're concluded.

THE REPORTER: Off the record, please.

(Deposition concluded at 3:35 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of NICHOLAS G. BROOKES at the time and place aforesaid; and that the foregoing transcript consisting of pages 283 through 513 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Louisville, Kentucky, this 6th day of November, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, NICHOLAS G. BROOKES, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 283 through 513, and that said transcript is a true and correct, full and complete transcription of my deposition except:

NICHOLAS G. BROOKES
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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